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No. 772

In the

United States Court of Appeals

For the Seventh Circuit

No. 11979

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. JOSEPH T. MARZEC, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division. Honorable John P. Barnes, Trial Judge.

APPENDIX TO DEFENDANT-APPELLANT'S BRIEF.

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JOSEPH A. STRUETT,
105 W. Madison Street,
GERALD M. CHAPMAN,
11 So. LaSalle Street,
Chicago, Illinois,
Attorneys for Defendant-Appellant.

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1 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois.

The United States of America, *Plaintiff*, *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and Joseph T. Marzec, *Defendants.*	No. 55 CR 679.

STATEMENT IN ACCORDANCE WITH RULE 12 (c) OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

(1) This action was commenced by the return of an Indictment on December 15, 1955, by the Grand Jury of the Northern District of Illinois, at Chicago, Illinois.

(2) The original parties to this action were the United States of America, Plaintiff, and Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and Joseph T. Marzec, Defendants.

(3) The indictment consisted of eight (8) Counts, each defendant by separate counts of said indictment, being charged with attempting to defeat and evade his individual income taxes for the years 1949 and 1950. Counts 1 and 2 related to Brandt; Counts 3 and 4 to Kusper; Counts 5 and 6 to Sobieraj; and Counts 7 and 8 to Marzec.

4. All of the defendants voluntarily surrendered and furnished bail.

(5) On January 16, 1956, the defendant Kusper entered a plea of not guilty, and on February 21, 1956, the
2 defendants Brandt, Sobieraj and Marzec entered pleas of not guilty.

(6) On January 18, 1957, the defendant Bruno J. Sobieraj withdrew his plea of not guilty, as to Count 5 of the indictment, and entered a plea of guilty to said count, and Count 6 of said indictment was dismissed as to him.

(7) On January 29, 1957, the defendant Frank A. Brandt withdrew his plea of not guilty, as to Count 1 of the indictment, and entered a plea of guilty thereto. On motion of the Government, Count 2 was dismissed as to him.

(8) On February 4, 1957, the defendant Joseph T. Marzec was placed on trial. The selection of the jury commenced, and the trial continued through February 4, 5, 6, 7, 11, 12, and 13, 1957, and was heard before the Honorable John P. Barnes, Judge of the District Court for the Northern District of Illinois.

(9) On February 13, 1957, the Jury returned a verdict finding the defendant Joseph T. Marzec guilty as charged in Counts 7 and 8 of indictment.

(10) On February 18, 1957, on motion of the government, the indictment was dismissed as to the defendant Stanley T. Kusper.

(11) On February 21, 1957, defendant Frank A. Brandt was ordered committed for one year on Count 1 of said indictment and probation was denied.

(12) On February 21, 1957, the defendant Bruno J. Sobieraj was ordered committed for one year on Count 5 of said indictment, the execution of sentence was suspended, and he was placed on probation for two years.

3 (13) On February 21, 1957, the Court entered a judgment upon said verdict against Marzec, and sentenced the defendant Joseph T. Marzec to three years, in the custody of the Attorney General of the United States on each of said Counts 7 and 8 of said indictment, sentences

to run concurrently, and admitted him to bail pending appeal upon the filing of a Bond of $10,000.00.

(14) Notice of Appeal was filed on February 21, 1957, on behalf of the defendant Joseph T. Marzec. His Appeal was that day docketed in the Court of Appeals, and he was ordered released pending Appeal upon the furnishing of a Bond of $7500.00, which was furnished that day, and approved by Order of the Court of Appeals.

Joseph T. Marzec,
Defendant

and

Joseph Struett,
Attorney for Defendant,
By Gerald M. Chapman.

Joseph Struett,
Attorney for Defendant,
105 West Madison Street,
Chicago, Illinois.

4 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of February, being the 4th day thereof, in the Year of Our Lord One Thousand Nine Hundred Fifty-Seven and of the Independence of the United States of America, the 181st Year.

Present:

Honorable John P. Barnes, Chief District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Win G. Knoch, District Judge.
Honorable Julius J. Hoffman, District Judge.
Roy H. Johnson, Clerk.
William W. Kipp, Sr., Marshal.

Thursday, February 21, 1957.

Court met pursuant to adjournment.

Present: Honorable John P. Barnes, Trial Judge.

5 UNITED STATES DISTRICT COURT,

Northern District of Illinois,

Eastern Division.

United States of America, *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec.	No. 55 CR 679 (26 U. S. C., Section 145 (b))

The February 1955 Grand Jury charges:

That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division,

Frank A. Brandt,

11 Count Seven.

The February 1955 Grand Jury further charges:

That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1949 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America, for the calendar year 1949, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the sum of $10,789.43, and that the amount of

tax due and owing thereon was the sum of $1,397.64; whereas, as he then and there well knew, he received during the said calendar year additional income consisting of his share of the proceeds from a joint venture conducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $19,830.78, upon which said net income there was owing to the United States of America an income tax of $3,658.16; in violation of 26 U. S. C., Section 145(b).

12 Count Eight.

The February 1955 Grand Jury further charges:

That on or about the 15th day of March, 1951, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1950 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1950, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of $23,881.79, and that the amount of tax due and owing thereon was the sum of $5,077.72; whereas, as he then and there well knew, he received during the said calendar year additional income, consisting of his share of the proceeds from a joint venture conducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj and himself, and that the joint net income for himself and his

wife for the said calendar year was, in fact, the sum of $65,593.67, upon which said net income there was owing to the United States of America an income tax of $25,-423.86; in violation of 26 U. S. C., Section 145(b).

A True Bill:

Charles S. Netzorg,
Foreman.

R. Tieken,
United States Attorney.

21 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

MOTION.

(Filed Jan. 16, 1956. Roy H. Johnson, Clerk.)

Comes now the defendant, Joseph T. Marzek, by Joseph A. Struett, his attorney, and respectfully requests that an order be entered by this Honorable Court granting a severance to said Joseph T. Marzek in the above cause.

In support of the above motion, the defendant, Joseph T. Marzek, represents to this Court that his interests in the above cause are antagonistic to those of the other defendants herein and that the Government and the United States Attorney have full knowledge of the facts establishing the antagonistic interests as aforesaid.

Joseph T. Marzek,
By Joseph A. Struett,
His Attorney.

Joseph A. Struett,
105 West Madison Street,
Chicago 2, Illinois.
FRanklin 2-0665.

36 UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

GOVERNMENT'S ANSWER TO MOTIONS FOR SEVERANCE.

Now comes the United States of America, by R. Tieken, United States Attorney, and states the following:

1. Upon trial of the above entitled cause, is is anticipated that the evidence will show that:

A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the Treasurer and General Counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was employed as an appraiser in real estate transactions.

B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture whereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union.

C. In accordance with the understanding by and between the defendants, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants.

37 D. Each of the defendants during the said years attempted to evade the tax due and owing on his share of the proceeds of the joint venture by failing to report certain sums received from the said joint venture.

2. All of the unreported income and evaded taxes charged to each defendant as set forth in the indictment are based upon and arise from the receipt by each defendant of his respective share of the proceeds of the joint venture referred to previously. No other source of unreported income will be presented in this case.

3. The Government submits from its knowledge of the evidence expected to be produced in court that:

A. A joint trial of the defendants will result in a substantial saving of time by avoiding the presentation to four separate juries of considerable evidence common to all defendants.

B. A joint trial can be held without confusing the jury, without prejudice to the defendants' rights, and without creating complexing and unmanageable problems during the course of trial which certain defendants seem to anticipate. If counsel for the defendants truly desire to avoid confusion and complexity as they seem to indicate in their motions, with their cooperation toward that goal an orderly joint trial of this case may be conducted.

For the reasons stated above, it is respectfully submitted that any and all motions for severance and for separate trials be denied.

R. Tieken,
United States Attorney.

37a Filed Jan. 20, 1956. Roy H. Johnson, Clerk.

1 United States of America,
Northern District of Illinois,
Eastern Division.

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

(Filed Nov. 8, 1956. Roy H. Johnson, Clerk.)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on January 23, 1956, beginning at 10:00 o'clock a. m.

Appearances:

Hon. Robert Tieken, United States District Attorney (450 U. S. Court House, Chicago 4, Illinois), represented by F. William Reeb, Esq., Assistant United States District Attorney, on behalf of the Government;

2 Messrs. Breen, Brumlik & Schaffenegger, (209 South La Salle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., on behalf of the Defendant Frank A. Brandt;

Bernard H. Sokol, Esq., (231 South La Salle St., Chicago 4, Ill.), on behalf of the Defendant Stanley T. Kusper;

Leo Klein, Esq., (10 South La Salle St., Chicago 3, Ill.), on behalf of the Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 West Madison St., Chicago 2, Ill.), on behalf of the Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec. Defendants' motions for severance.

By the Court: I will hear you gentlemen.

3 How long will the matter take?

By Mr. Sokol: Not over five minutes.

By Mr. Struett: About ten minutes.

By Mr. Klein: Less than that, I think, your Honor.

By the Court: I will hear you, gentlemen. You will be first on the call.

(And thereupon the Court gave attention to other matters upon the call, after which the following further proceedings were had herein:)

By the Clerk: No. 55 CR 679. United States of America *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and Joseph T. Marzec. Hearing on defendants' motions for severance.

By the Court: Proceed, gentlemen.

I have read your papers.

By Mr. Struett: If your Honor please, I set up that the position of Mr. Marzec is antagonistic to the other defendants, a fact known by the United States Attorney as they filed their answer.

I just want to give your Honor brief quotations

4 from the Government's answer:

"1. Upon trial of the above-entitled cause, it is anticipated that the evidence will show that:

"A. During the taxable years 1949 and 1950, the defendants, Frank A. Brandt and Stanley T. Kusper, were officers of the Polish Roman Catholic Union of America, being respectively the Treasurer and General Counsel of said organization. During the same years, the defendant, Joseph T. Marzec, was an employee of the organization, and the defendant, Bruno L. Sobieraj, was employed as an appraiser in real estate transactions.

"B. In connection with the application for and approval of certain real estate mortgage loans made by the Union during the said years, the defendants herein entered into a joint venture whereby payments, in addition to those customarily required by the Union on real estate loans, were required to be made to the defendant, Joseph T. Marzec, and were in fact made to him by certain real estate brokers in order to obtain favorable action and approval on advantageous terms to said brokers of mortgage loans submitted to the Union."

It is in their answer that that is set forth, that this is a joint venture that they charge. And this is the Government's answer to my motion.

"C. In accordance with the understanding by and between the defendants, the defendant, Joseph T. Marzec, retained his share of the proceeds and distributed the balance collected from these transactions to the other defendants."

Now, my position is very simple, Judge. If they can establish a joint venture they must show a general agreement between the parties, and they must show distribution of those funds between the parties.

And they say that is the only basis of their claim, the non-reported income, as against all of them.

And I wish to reply to that in a verified answer that the only way possible they can show it is by and through the testimony of Mr. Marzec, since most of these payments by him, as he claims, were made to the fund in cash.

And I also set up the other defendants' position which in substance is that they have had no joint venture and have received none of these payments.

I say under these facts, Judge, that the interests of Marzec as against the other defendants are antagonistic to each other, and there should be a severance in this case, either for the other defendants or for Mr. Marzec.

I just came in here, because I am going away, and I wanted to make our position clear to all the defendants and to the Government. And that is all I want to say.

There are some cases here—the cases are not too strong, your Honor; your Honor has got great discretion—it is a question of the Court's discretion.

It seems from the two cases I have found that where there is a real antagonism between certain defendants and other defendants a severance should be granted, particularly where the Government's case against the other defendants is dependent upon the version of one de-
7 fendant as against the other defendants. And they can't establish this joint venture on the facts as given to me without the testimony of Marzec as against these other defendants. And I have set that up in my reply.

And on that basis I say there should be a severance.

• • • • •

55 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—55-CR-679) • •

Monday, January 23, 1956.

Present: Honorable John P. Barnes, Chief District Judge.

This cause coming on for hearing on all motions for severance comes the United States by the United States Attorney come also the defendants Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec in their own proper persons and by their counsel and it is

• • • • •

Further Ordered that the motions of the defendants Stanley T. Kusper, Bruno L. Sobieraj and Joseph T. Marzec for severance and separate trial and the motion of the defendant Frank A. Brandt for severance or in the alternative to compel the Government to elect counts be and the same are all overruled and denied.

157 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-CR-679) • •

NOTICE.

(Filed Jan. 18, 1957. Roy H. Johnson, Clerk.)

To: Bernard H. Sokol,
1 North LaSalle Street,
Chicago, Illinois,
Attorney for Stanley T. Kusper;

Breen, Brumlik & Schaffenegger,
209 South LaSalle Street,
Chicago, Illinois,
Attorneys for Frank A. Brandt;

Mr. Leo Klein,
10 South LaSalle Street,
Chicago, Illinois,
Attorney for Bruno J. Sobieraj;

Mr. Joseph A. Struett,
105 West Madison,
Chicago, Illinois,
Attorney for Jos. T. Marzec.

Please Take Notice that on Wednesday, January 23, 1957, at 10:00 A. M., I shall appear before the Honorable John P. Barnes, United States District Judge, in Room 653 of the United States Court House, or before such other judge who may be sitting in his place and stead, and there present a motion for a severance of the defendant Joseph T. Marzec from defendants Stanley T. Kusper and Frank A. Brandt as to trial of counts 7 and 8 of the indictment in the above-entitled cause, copy of which motion is attached hereto. You may appear at such time and place as you so see fit.

R. Tieken,
United States Attorney.

158 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

MOTION FOR SEVERANCE FOR TRIAL AS TO DEFENDANT JOSEPH T. MARZEC.

(Filed Jan. 18, 1957. Roy H. Johnson, Clerk.)

Now comes the United States of America by R. Tieken, United States Attorney, and pursuant to Rule 14 of the Federal Rules of Criminal Procedure moves this Honorable Court to grant a severance of Joseph T. Marzec from the defendants Stanley T. Kusper and Frank A. Brandt and to grant an election by the United States of America to first proceed to trial upon counts 7 and 8 of the indictment in the above-entitled cause and as grounds therefor states as follows:

1. The Government adopts the statements and representations contained in paragraphs one and two of the Government's answer to the defendants' several motions for severance heretofore filed in this cause on January 20, 1956.

2. Defendant Joseph T. Marzec has from time to time during the pendency of this cause, by and through his attorney, Mr. Joseph A. Struett, represented to the
159 United States Attorney that he, Joseph T. Marzec, defendant herein, would be available to testify on behalf of the Government in the above-entitled cause, although he himself is one of the defendants. The United States Attorney has been advised as of January 14, 1957, by Mr. Struett that defendant Marzec will not be available to testify on behalf of the Government as long as the defendant Marzec remains joined for trial with the remaining defendants.

3. The United States of America has reason to believe and so states the fact to be, that defendant Joseph T. Marzec, if available to the Government as a witness in

the trial of defendants Frank A. Brandt and Stanley T. Kusper, can present valuable and direct evidence as to such defendants and each of them which if available will materially shorten the trial of the above-entitled cause as to such defendants. It is anticipated by the United States of America that if the defendant Marzec is severed from defendants Kusper and Brandt for trial that such separate trials may be had more expeditiously than a combined trial as to all three defendants, absent the testimony of Joseph Marzec as to the remaining defendants.

4. The defendant Sobieraj having heretofore entered a plea of guilty as to count five of the indictment in the above-entitled cause has thereby relieved the United States of America of certain lengthy issues of proof which will permit the Government to substantially shorten the 160 evidence to be introduced on its behalf. Defendant Sobieraj has made available to the United States of America additional evidence and will himself be available as a witness on behalf of the Government. It is respectfully submitted that the Government will, because of the present posture of the case, be materially prejudiced if the severance here prayed for is not granted.

5. It is further represented to this Court that in the event this motion for severance is granted as to the defendant Joseph T. Marzec, the Government, with leave of Court, desires to elect to proceed to trial on February 4, 1957, as to such defendant. The Government will be ready at the convenience of the Court to proceed with the trials of the defendants Frank A. Brandt and Stanley T. Kusper immediately upon completion of the trial as to the defendant Marzec, and in the event such severance is granted will call Joseph Marzec as its witness upon such further trial of the defendants Brandt and Kusper.

Respectfully submitted,

R. Tieken,

United States Attorney.

162 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

Friday, January 18, 1957.

Present: Honorable John P. Barnes, Chief District Judge

This day comes the United States by the United States Attorney comes also the defendant Bruno L. Sobieraj in his own proper person and by his counsel and by leave of Court first had and obtained withdraws his plea of not guilty heretofore entered as to Count 5 of the Indictment and being now arraigned upon said count 5 pleads guilty thereto and on motion of the Government by the United States Attorney it is

Ordered that Count 6 of the Indictment be and the same is hereby dismissed as to said defendant and it is

Further Ordered that this cause be and the same is hereby continued for disposition as to the defendant Bruno L. Sobieraj to February 4, 1957 at 10 A. M.

1 United States of America
Northern District of Illinois
Eastern Division

IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

(Filed Mar. 8, 1957. Roy H. Johnson, Clerk.)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Wednesday, January 23, 1957, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.), represented by Albert F. Manion, Esq., on behalf of the Government;

Bernard H. Sokol, Esq., on behalf of Defendant Stanley T. Kusper;

2 Messrs. Breen, Brumlik & Schaffenegger, (209 S. LaSalle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., and John V. Schaffenegger, Esq., on behalf of Defendant Frank A. Brandt;

Leo Klein, Esq., (10 S. LaSalle St., Chicago 3, Ill.), on behalf of Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 W. Madison St., Chicago 2, Ill.), on behalf of Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America *vs.* Frank A. Brandt, et al.

Motion of the Government for severance for trial of defendant Joseph T. Marzec.

By Mr. Manion: If the Court please, one of the defense attorneys has not yet arrived, Mr. Bernard Sokol.

Do you want to pass this for a moment until he arrives?

By Mr. Struett: If the Court please, I could be
3 heard on my motion. It is very short.

The motion does not give us very much time. It sets up facts; it is not verified, it contains no brief.

I would like ten days to answer, verified, and I will have my brief on file as required.

By the Court: What is the motion?

By Mr. Manion: Your Honor, this is a motion by the United States asking for a severance of the defendant Marzec from the defendants Brandt and Kusper, for trial.

Exactly a year ago today, your Honor, this Court heard various motions for severance filed on behalf of each of the defendants in the case. At that time the United States opposed such severance.

The motion this morning admittedly is a drastic change in the Government's position in this matter.

The reason for the motion at this time is this: The defendant Sobieraj, as of last Friday, appeared and entered a plea of guilty, and has indicated that he would testify for the Government if called as a witness. And we have advised the attorneys representing the other defendants—
4 (At this point there was an interruption of the proceedings, due to a disturbance in the corridor outside the court room door; after which the following further proceedings were had herein:—)

By Mr. Manion: To resume, your Honor, this motion this morning represents a substantial change in the Government's position, as we realize.

And the reason for it is prompted by the entry of a plea by the defendant Sobieraj—

By the Court: What was that last name? I didn't get it.

By Mr. Manion: The reason for this motion has been prompted in the first place by the entry of the plea by the defendant Sobieraj, and an indication by him that he will be willing to testify on behalf of the Government.

He has also made available to the United States additional documentary evidence, which we have not had previously. And we have been examining it since Friday, when we received it.

If counsel for the defense desire to see that evidence we will be able to make that available to them.

5 I tell them now for the record.

In the first instance this case was originally prepared and developed by the Internal Revenue Service as to the defendant Marzec only.

The defendant Marzec, at his own request, and by advice of counsel—and I think Mr. Struett will tell you this—appeared before the Grand Jury and gave testimony, which led to the inclusion of the other three defendants.

The United States attorney has been under the impression that the defendant Marzec would be available to testify for the Government in this case even though he was a defendant. However, Mr. Struett has now advised us that he will not be available to testify for the Government so long as he remains joined to the other defendants for trial.

His testimony is the best direct evidence to the defendants, and we believe by using the defendant Sobieraj, who has pleaded guilty, and if we can call the defendant Marzec we may very well shorten this trial and avoid many complicated issues and circumstantial proof.

Now, in fairness to Mr. Struett I will say for the rec-

6 ord at this time that Mr. Struett has not represented to the United States that he would permit us to call Mr. Marzec as a witness, or that he would make Mr. Marzec

available to us if we were to try Mr. Marzec in advance of the other two defendants. He has petitioned the Court for a severance as to Marzec, and to continue his trial until a later date.

However, it is the position of the United States that we would prefer to try the defendant Marzec first, because we wish no confusion in the record as to any possible equitable immunity in so far as we can control it with relation to the defendant Marzec.

There has been no deal made with him. That is not the reason for this. We believe the only reason we are estopped from calling him under the present status of the case is under Section 3481, Title 18, prohibiting a defendant from appearing except at his own request.

It is our understanding of the law that if the severance is granted the defendant Marzec, as to a separate trial, that he then may be called by the Government as a witness under subpoena in the trial of the other two defendants in the cause. And that is essentially the reason for the motion.

7 I would also advise the Court, and the other defense attorneys, that as of yesterday the United States has obtained new and additional evidence as to the defendant Brandt and the defendant Kusper.

That evidence has just come in to our possession, and only partially examined at the time, as of yesterday. I believe that we shall have to file, in fairness to the defendants, and as a part of the record, an amended bill of particulars, which we will attempt to do by Friday, as to the other two defendants.

That additional evidence may very well afford an additional reason as to severance for trial as to them, because at the time these motions for severance were argued before the Court a year ago today, at that time to the knowledge of the United States the evidence would be essentially the

same as to all four defendants. But at this time, as of yesterday we have received additional facts which would tend to throw light upon the guilt or innocence of the defendants Brandt and Kusper which would not include the defendant Marzec.

By Mr. Struett: Well, if your Honor please, I would like to answer these questions or these statements under oath, and file a brief.

This is a complete change of position, and it is very prejudicial to the rights of my defendant.

By the Court: In what respect?

By Mr. Struett: In every respect. I would like to argue it. I am working on an answer and a brief, and I would like to have it on file, and I would like to argue it.

By the Court: When do you want to try this case?

By Mr. Manion: The matter has been set for trial for February 4th, your Honor, and the Government will be prepared to proceed at that time.

By the Court: What is the number of the case?

By Mr. Manion: It is 55 CR 679.

By the Court: What time was it started?

(Documents handed to the Court.)

By the Court: It was started almost two years ago. It is almost time to dispose of it.

By Mr. Breen: If the Court please--

By the Court: Wait a minute.

Now, if defendants in a criminal case have rights to be tried together that is a new one to me.

Is that what you contend?

By Mr. Struett: No. And I don't like to get in an argument here on a motion where I want to file an answer and a brief on it.

By the Court: No. I just want to find out what possible issues could be made on the motion of the Government for a severance.

By Mr. Struett: They should have told your Honor a year ago that they can't make out a case without my defendant.

By the Court: Well, that may be.

By Mr. Struett: Then they come in here, and they refuse a motion for a severance, and now at the last minute, knowing that I am not ready for trial, and then they want to put my client to trial first, ahead of the other defendants and deprive them of substantial rights which he admits we may have under Supreme Court authority.

By the Court: My dear man, your client has been a defendant in this court since the early months of 1955.

By Mr. Struett: I understand.

By the Court: He has pleaded not guilty.

By Mr. Struett: I understand.

Now, they have completely changed their position. And I would like to answer this motion, and I would like to file a brief.

By the Court: Now, tell me, what objection can you make to a motion for severance?

By Mr. Struett: I have no objection to the motion for severance.

By the Court: Motion for severance is granted.

By Mr. Struett: All right.

By the Court: Now, what else?

By Mr. Struett: Now, I don't know whether these other defendants—

By the Court: What else is there to be determined?

By Mr. Struett: Then he wants to try my man first. I want to answer to that part of his motion.

By the Court: Well, tell me what objection you can have?

By Mr. Struett: Why, I am not ready for trial. It would be prejudicial of my client's rights. And it is a flagrant violation, how he misled me in this matter. And I will set it up under oath; that is exactly the situation, I

11 will set that up by verified motion and answer, and give you the facts and the law. That is all I want to do.

By the Court: Well, you have been standing here on a plea of not guilty for almost two years.

By Mr. Struett: Certainly I have, and presuming that he would have to use my client, and would use my client.

By the Court: You say he won't be available to him.

By Mr. Struett: I haven't said that.

By the Court: He stated that.

By Mr. Struett: No, he didn't. He has known all the time my client would be available.

By the Court: Is that right?

By Mr. Manion: Mr. Struett advised me as of last week —and I think Mr. Struett will agree with me—that as long as Mr. Marzec remains joined with the other defendants for trial that he would not be available to the Government as a witness.

By Mr. Struett: My client has been available.

By the Court: Have it ready for trial on the 4th of February at 10:00 o'clock.

By Mr. Struett: Can I file an answer to this motion?

12 By the Court: The motion is granted. You said you had no objection.

By Mr. Struett: To the severance.

By the Court: Your case has been set for 10 these many months—time for you to go to Europe and come back.

By Mr. Struett: If your Honor please, is it your contention—?

By the Court: Get it ready for trial on the 4th of February.

By Mr. Struett: If the Court please, I want to file an answer to his motion to try my defendant first.

By the Court: Well, the whole case has been set for the 4th of February, and it is not going to be changed; you are going to trial on the 4th of February.

By Mr. Struett: If your Honor please—

By the Court: (Addressing the Clerk) Call the next case.

By Mr. Breen: If your Honor please, may I be heard just a moment? This is another aspect of the case. We represent different defendants.

By the Court: What do you want to say?

By Mr. Breen: I represent the defendant Brandt. And up to this time until this surprise change in tactics my defendant was to stand trial jointly with the other defendants. Now, ten days before trial there is a shift in position by the Government, and the case is set for trial, in so far as Brandt is concerned, and Kusper, represented by Mr. Sokol, for February 4th, the same date he is going to trial. How can we get ready for trial, we would have to reset that date.

By the Court: You will go to trial immediately after the other gentleman.

Call the next case (addressing the Clerk).

By Mr. Sokol: If the Court please—

By Mr. Struett: If your Honor please, I assume that I may have an objection to your Honor's ruling. And I would like to have a copy of this transcript as soon as I can get it.

By the Court: You make your business arrangements with the Reporter outside of court, if you please.

By Mr. Sokol: If the Court please, I represent Stanley Kusper. And I don't want to make any representations consonant with what has been said before, so I don't want to inherit some of the Court's reactions.

By the Court: Now, I have heard a good many motions on this. Make your motion, quickly.

By Mr. Sokol: I would like to move that the defendant Kusper be tried separately from the defendant Brandt.

By the Court: Any objection?

By Mr. Manion: We have no objection at this juncture of the case. We have heretofore advised the Court that we felt that these men could in all fairness be tried together, and we see no inherent prejudice to the defendants Brandt and Kusper if they remain jointly tried. If they remained joined for trial we believe that they can be fairly and expeditiously tried together. However, if the Court would prefer otherwise in its discretion—

By the Court: Having granted one severance, you may have a severance. You gentlemen be ready in order because I will try you all right straight through.

By Mr. Sokol: Very well.

Now, I have one other matter to mention, and I think Mr. Manion will bear me out. I have been working pretty hard on this case, and I have been getting ready.

By the Court: Now—

By Mr. Sokol: Let me finish, if your Honor please.

By the Court: Well, I am telling you you will be ready for trial just as soon as I finish the cases in order.

By Mr. Sokol: There has not been one single continuance asked for by me.

By the Court: Listen.

By Mr. Sokol: But, your Honor, you won't let me finish. I want to ask for certain discovery, your Honor.

By the Court: Listen. If you don't quit talking when I talk I will have you removed. When I talk I talk, and nobody interrupts me. Don't try to talk me down.

Now, what is your further motion?

By Mr. Sokol: My further motion is this: In view of the fact that Mr. Manion has indicated that he is going to file a new bill of particulars, and in view of the fact that he has come into possession of new evidence, and that this Court has refused certain motions I have made under 17(c) and under Rule 16, and the fact that Mr. Manion has not

had an opportunity to look at this—and he tells me that he is not yet finished with it—that I be given leave, and I expect to file motions under 17(c) and 16, so that I may find this new discovery.

By the Court: This new matter, tell them about it in your bill of particulars. When are you going to file it?

By Mr. Manion: I will file it on Friday.

16 By the Court: File it on Friday.

And you gentlemen be ready for trial in order—alphabetical order after this one defendant—

By Mr. Manion: Marzec.

By the Court: After Marzec. In alphabetical order.

* * * * *

163 In the United States District Court.

* * (Caption—55 Cr. 679.) * *

Wednesday, January 23, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This day comes the United States by the United States Attorney come also the defendants by their counsel and the Court being fully advised it is

Ordered that the motion of the Government heretofore filed herein for a severance and separate trial as to the defendant Joseph T. Marzec be and the same is hereby granted and thereupon the defendant Stanley T. Kusper by his counsel moves for a severance and separate trial and the Court being fully advised it is

Further Ordered that said motion be and it hereby is granted and it is

Further Ordered that the defendant Joseph T. Marzec shall be tried first, defendant Frank A. Brandt, second, and the defendant Stanley T. Kusper, third, and it is

Further Ordered that the Government shall file its bill of particulars on January 25, 1957.

167 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

MOTIONS OF DEFENDANT JOSEPH T. MARZEC TO VACATE ORDER ENTERED JANUARY 23, 1957, SETTING HIS TRIAL FOR FEBRUARY 4, 1957, BEFORE THE TRIAL OF THE CO-DEFENDANTS AND FOR CONTINUANCE AND OTHER RELIEF AND AFFIDAVITS AND BRIEF IN SUPPORT OF SAID MOTIONS.

(Filed Jan. 29, 1957. Roy H. Johnson, Clerk.)

Joseph A. Struett,
Attorney for Joseph T. Marzec,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665.

168 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

MOTION OF DEFENDANT MARZEC TO VACATE ORDER ENTERED JANUARY 23, 1957, SETTING HIS TRIAL FOR FEBRUARY 4, 1957, BEFORE THE TRIAL OF THE CO-DEFENDANTS.

Now comes Joseph T. Marzec, by his attorney, Joseph A. Struett, and moves to vacate this Court's order entered on the Government's motion on January 23, 1957, setting his trial for February 4, 1957, before the trial of the Co-defendants in said cause, and as grounds for this motion states that this Court (as shown by the official transcript of proceedings on the Government's said motion, a certified copy of which official transcript is marked Exhibit A, at-

tached hereto, and incorporated herein by reference) failed and refused to follow the rules governing this Court concerning the practice on said motions, and failed and
169 refused to allow this defendant's objections and answer to the Government's motion to be filed, heard and considered in due course, as provided in said motion practice, which objections and answer to the Government's motion are as follows:

1. Defendant objects to said Government motion (a) for failure by the Government to give him timely advance notice of the filing and presentation of said motion as required pursuant to Rule 6 of the Criminal Rules adopted by this Court in this District, Rule 6(a) and (d), and Rule 83 of the Rules of Civil Procedure for the United States District Courts and Rule 12(b) and 13 of the Rules of Civil Procedure adopted by this Court in this District, requiring five days' advance notice to be served upon this defendant, exclusive of the day of mailing of said notice, and exclusive of the intervening Sunday; (b) for failure to file said notice of the Government's motion and any supporting affidavits with the Clerk of this Court at least two days before return day, as required by Rule 3(b) of the Criminal Rules adopted by this Court in this District; and (c) for failure to support the factual allegations in the Government's said motion by filing appropriate affidavits as required pursuant to Rule 6 of said Criminal Rules adopted by this Court in this District, Rule 6(d) of the Federal Rules of Civil Procedure, and Rule 12(c) of the Rules of Civil Procedure adopted by this Court in this District, and other pertinent authority.

2. Defendant objects to the Government's motion insofar as said motion seeks to sever his case from that of the other defendants for the purpose of putting him to trial prior to the other defendants, on the ground that said motion is designed, contrary to law and equity, to

deprive defendant of his rights to executive clemency and a dismissal of the pending indictment against him for his cooperation with the Government, including his testi-
170 mony against other defendants, and his right to a post-ponement of trial pending the granting of such executive clemency and dismissal aforesaid.

3. Answering the Government's said motion, defendant denies the implication contained in the last sentence of paragraph 2 to the effect that it was not until January 14, 1957, that the United States Attorney was advised by Mr. Struett that defendant Marzec would not be available to testify on behalf of the Government while joined for trial with the other defendants, and denies the further implication to the effect that defendant Marzec would testify on behalf of the Government so long as his case was severed for trial from that of the other defendants even though put to trial before the other defendants, and states that the United States Attorney knew, at all times since January, 1956, defendant Marzec's position that he would fully and freely testify for the Government against the other defendants but only if his case were severed for trial from the other defendants far enough in advance of trial to permit the other defendants to make adequate preparations in the light of his proposed testimony and only if the other defendants would be put to trial before him, and that he would not lend himself to any arrangement to surprise the other defendants.

Defendant further states that he has been and still is ready, willing and able to testify fully and freely on behalf of the Government as against his co-defendants under the circumstances as aforesaid.

Defendant further states that the representations made by the Assistant United States Attorney upon presentation of the Government's motion, as set forth in Exhibit A hereto attached, are not true and correct in that there

was an agreement on behalf of defendant with the United States Attorney in fact as well as in law whereby de-
171 fendant Marzec's co-operation, including his full and free testimony, would be extended to the Government as against the other persons who have been indicted herein, upon the understanding that defendant Marzec would have the customary and legal right to executive clemency and the dismissal of the indictment against him as soon as the cases against the other defendants are disposed of, necessitating the postponement of his case including the dismissal thereof until after the other cases had been heard and disposed of. Defendant further states that in pursuance of and in reliance upon said agreement on behalf of this defendant with the United States Attorney, this defendant, through his counsel, was called upon by the Government for assistance and co-operation from time to time, in obtaining and furnishing information valuable to the prosecution of the other defendants, and this defendant, through his counsel, did fully and freely obtain and furnish such information as requested.

4. Further answering the Government's motion with reference to paragraph 3 thereof, defendant denies the implication that there is and has been a question of the availability of this defendant to testify on behalf of the Government against the co-defendants, and states that he is informed and believes, and upon such information and belief, states the facts to be, that the Government could not prove its case against the co-defendants without defendant Marzec's testimony (as indicated by the Government's answer to defendant's previous motion for severance, which was allowed to stand as its bill of particulars), and that the defenses of the co-defendants were antagonistic to the position of this defendant, making their joint trial with this defendant impossible in law, and that "ab-

sent the testimony of Joseph Marzec as to the remaining defendants," the Government, contrary to the implication in said paragraph 3, could not prove a case against the co-defendants.

172 5. Further answering the Government's motion, denies the conclusions and opinions expressed in paragraph 4 thereof and demands strict proof of the factual basis, if any, in support thereof.

Defendant further states that the implication therein, to the effect that the recent plea of guilty of defendant Sobieraj and his availability as a witness against the other defendants may create a sufficiency of proof against the other defendants without the testimony of this defendant, is incorrect, and that in truth and in fact, the status and availability of defendant Sobieraj as a witness against the other defendants in no way justifies the Government's admittedly drastic change of position and its said motion, herein complained of.

6. Further answering the Government's said motion, with respect to paragraph 5 hereof, defendant states that said motion has been filed in bad faith insofar as the Government avows its purpose to be, as more fully appears from the said motion and Exhibit A hereto attached, to put defendant Marzec to trial and to do so first, before the other defendants are put to trial, and to compel his testimony against the other defendants by subpoena and court process, and to disclaim any obligation to defendant Marzec with reference to his right to have executive clemency and to dismiss the pending indictment against him, contrary to the agreement in fact and in law on behalf of said defendant Marzec with the United States Attorney, as set forth above.

7. Further answering and objecting to the Government's said motion, defendant states that the Govern-

ment's concededly drastic change of position in attempting to disavow its obligations to Marzec, as aforesaid, and to force him to trial, and to do so before the trial of the other defendants, is grossly prejudicial to this
173 defendant and contrary to law, equity and good conscience, and takes defense counsel by surprise, without adequate time in which to recast his defense and prepare and present pretrial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, all as more fully appears from this defendant's motion for continuance and for other relief, as hereinafter set forth.

All of the foregoing objections and answer are supported by the affidavits contained in the brief filed in support of this and the following motions. For convenience the transcript of the proceedings of January 23, 1957, Exhibit A, appears after said brief.

Joseph A. Struett,
Attorney for Defendant Joseph T. Marzec.

174 Motion of Defendant Marzec for Continuance and Other Relief.

Now comes defendant, Joseph T. Marzec, by Joseph A. Struett, his attorney, and moves for a continuance and postponement of the time of trial of this defendant to a date following the disposition of the cases against the other defendants herein, and until action is taken by the Government to accord to this defendant his right to executive clemency and has moved for a dismissal of the indictment against him, on the basis of the agreement on behalf of this defendant with the United States Attorney, as set forth in the foregoing motion, and in the light of the affidavits

set forth in the brief filed in support of this and the foregoing motion, and moves for such other and further relief as this Court may deem proper under the circumstances of this case.

In the event that the foregoing motion of this defendant, set forth immediately above, is denied, defendant moves for a continuance and postponement of the trial of his case from February 4, 1957, to a date in the September 1957 term of this Court, and in support of this motion, states that the Government's concededly sudden and drastic change of position in disavowing its obligations to this defendant under its agreement, as aforesaid, and in putting him to trial, and in doing so first, before the trial of other defendants, has taken this defendant's counsel by surprise, without adequate time to recast and develop a defense and prepare and present pre-trial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, none of which work and preparation was contemplated or performed while said agree-
175 ment with the United States Attorney appeared to be honored by him; and further states that, as this Court and the Government were informed in September, 1956, this defendant's counsel had made arrangements to go on a world cruise between March 15 and July 1, 1957; that it would be impossible for this defendant's counsel to make adequate preparation for trial of this defendant's case and to conduct a trial of said case before he leaves on said trip, in view of the necessity of disposing of his other matters, engagements and affairs, and this defendant's counsel would be forced to attempt to withdraw from said case unless a continuance and postponement of trial is granted to a date not earlier than the September, 1957, term of this Court.

All of the foregoing facts are supported by the affidavits contained in the brief filed in support of this and the foregoing motions.

Respectfully submitted,
Joseph A. Struett,
Attorney for Defendant Joseph T. Marzec,
105 West Madison Street,
Chicago 3, Illinois,
FRanklin 2-0665.

176 Affidavits and Brief in Support of Motions of Defendant Joseph T. Marzec.

May It Please the Court:

Now comes Joseph T. Marzec, one of the Defendants herein, by his attorney, Joseph A. Struett and respectfully requests this Court to dispose of his various motions filed herein, consistent with the verified facts, thoughts, and law herein set forth. In addition, this Defendant respectfully requests that he be granted such further and additional relief as may be prayed for herein and/or as this Court may deem proper.

Foreword.

"Drastically" shifting his position, the United States Attorney would now grant this Defendant a severance; try him first; then proceed with the trial of the remaining Defendants using his required available testimony as against them. It is unfortunate that this Court on the eve of trial has to be burdened with the problems precipitated by the present motion of the United States Attorney. It is not our fault. It is equally unfortunate the United States Attorney did not frankly a year ago, advise this Court that he intended to use this Defendant as a witness against the

other Defendants—when he well knew that he could not make out a case against them without the testimony of this Defendant—and refused to agree to our motion for a severance—as he was duty bound to do under Rule 14 of the Rules of Criminal Procedure and decided cases. And, he would misrepresent to the Court on January 23, 1957 that Mr. Struett "has now advised us that he 177 (Marzec) will not be available to testify for the Government so long as he remains joined to the other defendants." He knew it continuously since January of 1956 and was repeatedly so advised. We then, not now, begged him to so do in fairness to this Court, the other Defendants and this Defendant. And that was what precipitated our motion for a severance in January of 1956, which he opposed. Had he so acted the severance would have been granted. These other Defendants would have been put to trial—if they stood trial this Defendant would have testified against them—and then this Court in an orderly manner could have taken up the problems presented in this Defendant's case and disposed of them. Instead on the eve of trial the United States Attorney, most unfairly, as a surprise move, completely shifts his position after misleading Defendant's counsel and attempts to force this Defendant to trial on February 4, 1957. All designed to force this Defendant to plead guilty and to deprive him of most substantial rights, which have already accrued to him.

It is the firm position of this Defendant that he has acquired most substantial rights herein which requires the United States Attorney to proceed no further with this case against him, to dismiss this case as to him or aid him in obtaining executive clemency, to which he is entitled as a matter of law and which rights include the right of this Defendant to have this Court continue this case against him until he is relieved of said indictment by ac-

tions of the Executive Department of our Government—all as should appear from the facts and law herein.

It is not the intention of this Defendant to waive any of such substantial rights so acquired by anything which may be said or appear herein or which may subsequently occur in this case—or any motions which may be made
178 herein—and none of his acts, statements, motions, etc., or those of his attorney appearing herein are to be so construed. All further action on his behalf which may be taken herein is taken reserving to him these substantial rights so acquired—and not in derogation thereof or in waiver thereof. All future action which the Government may take against him herein—and any orders which may be entered herein against him are all objected to on the ground that they are in violation of said substantial rights as aforesaid. To illustrate, there appears herein a motion of this Defendant that the case against him be continued until fall most briefly because of the "surprise" tactics of the United States Attorney, his lulling this Defendant's counsel into a false sense of security—and the fact that Defendant's counsel cannot adequately prepare for trial on February 4, 1957 and will be on a world cruise from approximately March 20, 1957 to July 1, 1957. None of these matters are intended to be a waiver of this Defendant's substantial rights or construed as such. And accordingly, this Defendant respectfully requests this Court to enter an appropriate order to fully and adequately protect this Defendant and his substantial rights as aforesaid which said order as so suggested should contain a provision that all subsequent acts of the United States Attorney herein or orders herein—other than an order continuing this case, awaiting dismissal or executive clemency, or an order of dismissal—are all objected to by this Defendant on the grounds that the United States Attorney has no right to proceed further and that in doing so he is violating De-

fendant's substantial rights as aforesaid and that said objection need not be repeated as any of said acts or orders take place in the future.

179 I.

The Facts.

The Polish Roman Catholic Union, referred to herein as the "Union", is a fraternal life insurance organization with its principal office located at 984 Milwaukee Avenue, Chicago, Illinois. Since 1941, the Union had, as accumulated reserves, funds available which it invested in first mortgages on improved real estate, such as apartment buildings, stores, and small homes, in and about Chicago. As here pertinent, these investments were made through approximately twelve different real estate brokers who received from the Union one per cent of the face value of said mortgages for procuring said loans.

This Defendant entered the employ of the Union in 1937. Since that time his primary duties have been that of an accountant and bookkeeper, keeping track of mortgage and insurance accounts, making collections thereon, and enforcing collections against delinquents. In addition, he later procured a real estate broker's license and he also procured an insurance broker's license, and as a side line, he has engaged in these businesses.

This Defendant did not determine what brokers should be entitled to these real estate loans, the individuals who should be given these mortgages, the amount to be loaned on particular parcels of real estate, the value of the parcels of real estate to adequately secure these mortgages, and the legal aspects and consequences of such mortgage loans. Rather, that determination rested primarily with the other Defendants herein.

Most generally, the Defendant Brandt during the times mentioned in said indictment, was the Treasurer of said

Union, a member of its Executive Committee, and had only the overall general supervision of all loans. Under 180 the laws of the State of Illinois, no loan could be made by the Union except upon an independent appraisal of the securing property by a recognized "independent" appraiser. The Defendant Sobieraj from 1941 to 1953 was that independent appraiser. The Defendant Kusper was the attorney for said Union and was charged with the responsibility of all legal aspects and consequences arising out of said real estate mortgages. Thus, speaking most generally, before said Union could or would make any loans as aforesaid, that loan required the separate and collective determination of these other three Defendants.

Most generally, the brokers who secured these first mortgage loans from said Union for themselves or their clients, paid a commission from three to five per cent of the face value of said mortgage to a real estate broker designated by these other Defendants, and particularly the Defendant Brandt. During the time specified in this indictment, this Defendant was such broker and received such commissions as aforesaid from said real estate brokers acting as the collector for same. Again, most generally, this Defendant in turn, with some variations, paid over one-fourth of the amount of said commissions so received by him to each of the other three Defendants, retaining one-fourth for himself for his services as collector as aforesaid. Sometimes certain Defendants received less than their one-fourth share, and again some Defendants did not receive any, but the overall picture was substantially as above.

Some of these brokers paid these commissions to this Defendant by way of checks, payable to his order. As to these amounts, he usually paid the Defendants Kusper and Sobieraj their determined shares by checks payable either to them or to such persons whom they might designate. It is this defendant's understanding that these two other

defendants may well have reported said amounts in
181 their income tax returns. Other brokers drew checks payable to cash for these commissions and sometimes paid this Defendant in cash or this Defendant collected the proceeds of said checks. Other brokers paid this Defendant these commissions in cash. As to these particular "cash" commissions, that is, those received by this Defendin cash, or the proceeds of "cash" checks, the distribution thereof by this Defendant to the other Defendants of their proportionate share was also made secretly to them and each of them in cash outside the presence of any other person. As to the Defendant Brandt, his share of all of these commissions was at all times paid to him secretly in cash, irrespective of how they were paid to this Defendant, either by check or cash.

Most generally, with some qualifications, neither this Defendant nor the other Defendants (as this Defendant has been informed and believes) picked up in their income tax returns or reported their respective shares of the "cash" commissions which were paid to this Defendant in cash, and generally three-forths of which was passed on to the other Defendants in cash as aforesaid. This in the main is the subject matter of the above cause of action.

This Defendant represents to this Court that while the Government may well have much evidence furnishing a strong suspicion that these facts are true, it may safely be said and it would appear obvious that the Government is unable to specifically trace these monies (cash) to the other Defendants herein without the benefit and aid of this Defendant, and that, therefore, unless this Defendant testifies for the Government as against each and all of his co-defendants the Government case against them would fail.

As this Court well knows, the embryo and very foundation of any income tax prosecution is an investigation with-

in the Bureau of Internal Revenue (now known as the
182 Internal Revenue Service, but referred to herein as the "Bureau"). As such investigation progresses or is completed, a determination is made within the Bureau as to which sanctions, civil and criminal, of our Revenue laws should be applied against a particular taxpayer and his case. If it is determined to apply the criminal sanctions, then the Bureau, before effecting a civil disposition of that case, refers the case to the Department of Justice with its, the Bureau's recommendation of prosecution. Basically unless the Bureau forwards the case of a particular taxpayer to Justice Department, with its prosecution recommendation that case is never presented; it never reaches Justice but is settled civilly within the Bureau—and Justice prosecutes only such taxpayers whose cases are referred to it as aforesaid. Thus the Bureau can stifle the prosecution of the case of any taxpayer. The Justice Department, in turn,—as to cases it receives from the Bureau with its prosecution recommendation—if it approves the Bureau's recommendation, forwards the case to the United States Attorney for presentation to a Grand Jury.

Here, the Bureau, after "investigation", if it could be called an investigation, forwarded this case to the Justice Department, charging all of these commissions as income against this Defendant and recommending only the prosecution of this Defendant. In this file, as this Defendant has been informed and believes, were Affidavits of the other Defendants of substantial effect that they had in no way participated in these (cash) commissions. It is Defendant's best recollection that the investigating agents never asked him if he ever shared these commissions with anyone and even though they knew he was sharing at least some commissions with at least two of the other Defendants. It is sufficient to here state that it was and is the opinion of this Defendant and his counsel that much chi-

canery and skullduggery went on behind the scenes
183 during the course of this investigation, which resulted in the Bureau's recommendation as made. The United States Attorney long ago was given most of the facts supporting this statement, and it would appear that the United States Attorney has now uncovered additional facts. All these facts can be assembled and presented to this Court, if it so desires.

This Defendant is certainly not without culpability in this matter. Once this case reached the office of the United States Attorney, this Defendant employed new counsel, if he ever before had counsel of his own choice to properly advise him. He then brought to the attention of the United States Attorney the fact that he was willing under proper circumstances to admit his own culpability but that there were other persons involved whose even greater guilt might well have been stifled within the Bureau; that he alone was in a position as an accomplice to furnish information and testimony which would be required to cause the indictment and successful prosecution of such other persons; and that if the United States Attorney desired his assistance, cooperation and testimony for such purpose, he offered to make such assistance, cooperation and testimony available to him. The United States Attorney indicated he was willing to avail himself and did avail himself of said offer and procured from defendant Marzec or his counsel detailed information, grand jury testimony and other requested cooperation at all stages thereafter, bringing about the indictment of the other defendants and making possible the successful prosecution of said defendants, one of whom has already, by virtue of such cooperation and the availability of Marzec's testimony, pleaded guilty. This Defendant has to date incurred much expense by way of fees for his counsel and accountant—and given much of his time in working with them in assembling facts and

184 information given to the United States Attorney as aforesaid. It took months to get together some of the facts given the United States Attorney. And, he would put him to the additional expenses of a trial.

When this Defendant went to the United States Attorney with many facts indicating that there was something radically wrong with the Bureau's recommendation that he alone be prosecuted and the United States Attorney accepted those facts and as far back as 1955, made use of them, and this defendant's testimony, they then and there pooled their resources all to make certain that substantial justice was done in this case. And the United States Attorney would say to this Court on January 23, 1957, "There has been no deal made with him (Marzec.)" And he would say Marzec appeared before the Grand Jury "at his own request." He did not get in there without the knowledge and consent of the United States Attorney and for the purpose as aforesaid. Most generally it was the United States Attorney and Mr. Marzec on one side and the Bureau and these other defendants on the other side. The United States Attorney should be required to give this Court the details. In fact they became engaged in a "joint venture" each with fixed duties and obligations to the other and each had certain duties to perform. They then and there had an agreement in "fact and law" with all its legal consequences. All that remained was to work out the mechanics of their understanding to effectuate the object of their agreement. They did not have to sit down and spell out its terms, purposes, and consequences nor execute the agreement under seal. The facts and law made the "deal" between them. Out of this joinder of effort—however it be termed; and whether it be considered express or implied; there emerged as an integral part thereof the Defendant's right to immunity herein, dismissal, provided

he fully performed his part of the bargain. This is
185 just common sense, basic fairness, the decency of due process and fair play. *United States* v. *Morgan*, 304 U. S. 1.

This defendant would fully perform. The United States Attorney would breach.

This Defendant's obligation to the United States Attorney, most certainly, from the very beginning, included the duty to fully cooperate with him in connection with the trial of this case, furnished him with possible information he desired that could be furnished, and to come forward and fully and freely testify against these other Defendants if the United States Attorney so desired or required. He and his counsel have at all times recognized that obligation, have never quibbled over it, and as of this date have done everything sought or required of them. In full recognition of his obligation as aforesaid Defendant represents to this Court, and assures the Court that even if it should permit this Defendant to be tried first and, whether he is convicted or acquitted, he will still recognize and perform all his obligation as aforesaid; more specifically he will testify against these co-defendants if his testimony is required. This should end the Government's professed "fairness" to Mr. Struett as it appears in the proceedings of January 23, 1957. When Mr. Struett makes any agreement on behalf of a client—he makes certain that that client fully performs or that client gets another lawyer. With the greatest deference to the United States Attorney, this Defendant and his counsel do not believe that obligation includes the duty to plead guilty—or to waive any of his substantial rights herein.

The United States Attorney's obligation to this Defendant most certainly included the duty to dispose of this Defendant's case fairly and equitably and consistent with

established procedures and recognized legal author-
186 ity. And, most specifically, if he availed himself of Defendants' side of the bargain—and Defendant performed to the best of his ability—to dismiss. He has consistently refused to recognize his duties and obligations to this Defendant; has quibbled about them; has sought to take unfair advantages of this Defendant and now admittedly, would deprive him of the substantial rights given him under the law.

The United States Attorney in his recent motion and again in open court on January 23 implies that he now has available to him much additional evidence and could convict these other defendants "absent the testimony of Marzec"—though he would still try Marzec first then compel him by process to appear and testify against the others. Presuming his implication be true, which we may doubt, the fact still remains that whatever evidence he may now have, its very source and foundation, has to be the prior cooperation, information and testimony of Marzec. Should the United States Attorney deny this representation and statement he should be required by this Court to forthwith disclose—just what information and evidence he had against these other Defendants before his "deal" with Marzec. It would be a bit disgusting if he is now attempting to squirm out of the "deal" because he now no longer requires Marzec's testimony and cooperation. His conduct would be even worse if he is now so acting believing that he will obtain pleas of guilty from all these other Defendants. Having received the full benefit of his "deal" with Marzec he would now deny it. His own success herein condemns and destroys his every denial and his every action against this Defendant. He should be required to fully perform his part of the deal—to dismiss—. It is most respectfully submitted that this Court should continue this Defendant's case until the United States Attorney does dismiss.

187 All this Defendant who has "fully performed" has ever asked is that since his testimony would be antagonistic to the rights of the other Defendants, that he be granted a severance as required by law; that his testimony, if used against the other Defendants, be used under circumstances that would be fair to them; and that if he conducts himself as aforesaid and fully and freely testifies on behalf of the Government and against his co-defendants, the cause of action against him be then disposed of consistent with the utterances of the Supreme Court of the United States and its lower courts. This Defendant has resisted and will continue to resist the efforts of the United States Attorney, through pressures of his powerful position, to exact from him any action or considerations which may be inconsistent with such utterances. More specifically, contrary to the utterances of our Supreme Court, the United States Attorney here desires and has desired that this Defendant first plead guilty and then give required testimony, as a "last minute witness", against his co-defendants. He would now attempt to compel this Defendant to do so by forcing this Defendant to trial first. Seemingly, he would place the cart before the horse. In any event, such is not the orderly and lawful procedure contemplated by the Supreme Court.

II.

Motion that this Defendant be Granted a Severance Consistent with Rule 14 of the Federal Rules of Criminal Procedure.

This motion was a real "surprise." The question now being decided, the discussion herein is to emphasize how drastically the United States Attorney shifted his position—and how he now would take advantage thereof to the unconscionable detriment of this Defendant. As this Court

no doubt recalls, when the above case, over a year ago, 188 first came up for hearing before this Court, this Defendant made this very motion, pointing out that his position in this case was antagonistic to the other Defendants and that the facts were known to the Government. Under these facts, seemingly such a severance was required under **Rule 14.** For some unknown reason, the United States Attorney opposed that motion, giving to this Court but part of the facts and perhaps not the controlling ones. In fact the United States Attorney implied to this Court that his case against these other Defendants did not "rest completely" on the testimony of this Defendant (his own pleading would seemingly indicate otherwise) and that while Marzec "might" testify for the government that was "his (Marzec's) problem." This Court then denied said motion for a severance and similar motions of the other Defendants, all on the urgings of the United States Attorney.

Since that time, the attorney for this Defendant has persistently and consistently, even as late as January 14, 1957, urged upon the United States Attorney that this Court when it denied said motion may well have not been given the controlling facts, that it might well be reversible error to try these Defendants together, as emphasized by certain cases which were furnished to the United States Attorney, and requested and urged the United States Attorney to either prepare and present a motion seeking such a severance, or to join in with this Defendant to obtain such a severance. His requests and urgings were rejected. Defendant's counsel was but attempting to point out to the United States Attorney the legal errors in his action and thinking and prevent him from engaging in an abortive trial. He was standing in his own way! The United States Attorney continuously insisted from January of 1956 up to and including January 18 of 1957, that he de-

sired to try all the Defendants together, that he could
189 not grant this Defendant a severance, that he did not want two trials, and the interests of justice would be best served by trying all of them together. Defendant's counsel was just mystified.

To excuse and justify his complete shifting of position and his most tardy presentation (practically on the eve of trial) of his motion for a severance, the United States Attorney would, in paragraph 2 thereof, misrepresent, at least by inference, that Defendant's counsel, after repeatedly assuring him that this Defendant would be available to testify against the other Defendants, then, for the first time, on January 14, 1957, advised him that this Defendant would not testify unless he were granted a severance. In fairness to this Court and all parties, he should have disclosed to this Court that he was advised that this Defendant would not testify against his Co-defendants unless granted a severance even prior to the time that this Defendant presented his own Motion for a Severance, January of 1956, and continuously thereafter. Yet on January 23, 1957 the United States Attorney made the following misrepresentation to this Court:

> "The United States Attorney has been under the impression that the defendant Marzec would be available to testify for the government in this case even though he was (joined as) a defendant. However Mr. Struett has now advised us that he will not be available to testify for the government so long as he remains joined to the other defendants for trial." (Par. Sup., meaning obvious.)

This mispresentation of the true facts appears of like effect in his motion as above. In combination he misrepresents to this Court that Defendant's counsel repeatedly assured him that this Defendant would be a witness against these other defendants even if he remained joined with

them and that it was not until January 14, 1957 that 190 Defendants' counsel advised him that this Defendant would not testify against the others unless granted a severance. Thus as an excuse and justification for his inexcusable motion, drastic shift of position and action, he would misrepresent that this Defendant's counsel had continuously misled him and that he was caught by surprise on January 14, 1957—and that Defendant's counsel had shifted his position. His entire conduct as here developed is refuted by this Defendant's motion for a severance filed in January of 1956.

He would offer as an additional excuse or "main" reason, the fact that the Defendant Sobieraj pleaded guilty. This fact has not the semblance of relation to the facts and issues here presented. Had the United States Attorney during the summer of 1956 "followed through" on the then given cooperation of this Defendant and his counsel, he could well have disposed of this case last September. He should be required to give this Court the facts if he persists in attempting to escape his just obligation.

Defendant's counsel repeatedly advised the United States Attorney that he felt that the United States Attorney was duty bound to forthrightly disclose and make most clear to this Court and to the other Defendants the status of this Defendant in this litigation; that is that he was to be a witness for the Government against his Co-defendants and that he, Defendant's counsel, would insist that counsel for the other Defendants be so advised far enough in advance of the trial so that they would have ample opportunity and time to prepare their defense on that basis.

For over a year, Defendant's counsel has persistently and consistently advised the United States Attorney that if he expected this Defendant to be a "bona fide" Defendant with these other Defendants and then on the eve of the trial or even after the trial commenced to come for-

ward and plead guilty or ask for or agree to a sever-
191 ance and then voluntarily testify on behalf of the Government, all to lead the other Defendants into a false sense of security or to "catch the other Defendants by surprise," he would not be a party to any such arrangement, expressed or implied. That this was really what the United States Attorney desired should be confirmed by other counsel in this case. He, a long time ago, advised them in substance "That once the trial of this case commenced there was nothing to stop Marzec from pleading guilty and coming over to the 'other side of the table.'" A most plain admission of the "deal" which they denied on January 23, 1957. In view of the representations made by the United States Attorney to this Court in January of 1956, such contemplated action could only result in reversible error. The real reason why he continuously was so insistent that this Defendant appear as a "bona fide" Defendant with the other Defendants and then at the trial come forward as a "voluntary" witness under Section 3481, Title 18, may be inferred from his remarks on January 23. He may have intended that this Defendant thereby waive his substantial rights to a dismissal of this case.

The United States Attorney was consistently during the last year, advised that if he insisted on trying these Defendants together, it would most probably be reversible error, and that this Defendant in fairness to the other Defendants would have no alternative but to stand trial with them, see the trial through, and would not under any circumstances be available as a "last minute" witness against the other Defendants. Not only were these attitudes of Defendant's counsel repeatedly made most clear to the United States Attorney, but he also advised all counsel for these other Defendants of them and what he had told the United States Attorney, as all of them should confirm. This Court

is well aware of the utterances of the late Justice
192 Evan Evans in his dissenting opinion in the Johnson case, as to "catch-as-catch-can" methods in criminal cases.

The United States Attorney continuously from January of 1956 up to and including January 14, 1957, was fully aware of the attitudes of this Defendant and this counsel. The United States Attorney, during all this period, equally recognized and conceded time and time again to Defendant's counsel that it was exceedingly questionable whether he could make out a case against these other Defendants unless this Defendant did so testify for the Government. Yet, he persisted in insisting that he was going to try all of them together. This did not make sense to Defendant's counsel and never did, and he repeatedly so told the United States Attorney. He just could not try all these Defendants together. Basically he could not make out a case against these other Defendants without the testimony of this Defendant. He should have known it as well as did the Defendant's counsel from the very time this indictment was returned and continuously thereafter, even up to the present time. Giving him the benefit of a doubt, and presuming he could make out a prima facie case against all of these Defendants; none of them could make a defense without implicating the other, and more particularly this Defendant's position being antagonistic to that of the other Defendants, his testimony of necessity would most strongly bolster the "prima facie" case against the other Defendants. This is not such a joinder of Defendants as is contemplated by Rule 13 of our Federal Rules of Criminal Procedure, but rather as is condemned by Rule 14. It obviously might well have been reversible error for him to have tried these Defendants together (*U. S.* v. *Haupt*, C. A. 7, 136 F. 2d 661).

As the eve of this trial approached, even as early as

December of 1956, Defendant's counsel ever increasingly pointed out to the United States Attorney this situa-
193 tion and requested information as to just what the Government intended to do—all without avail. He repeatedly admonished the United States Attorney that this Court when it set this case for trial contemplated that it should go to trial; that he couldn't without inviting reversible error proceed as he insisted; that he should rectify his error; and disclose his real intent so that the rights of all Defendants would be adequately protected rather than be prejudiced. And, that otherwise there would be much confusion, misunderstanding and difficulty. What he was really intending to do was disclosed by his motion and admissions in open court on January 23, 1957. Having been frustrated in his efforts to have this Defendant waive his rights to immunity by testifying under Section 3481, and then hoping that he could pressure this Defendant into pleading guilty and have him waive, or deprive him of substantial rights, he intended at the last minute to completely reverse his position, catch this Defendant and his counsel by surprise, move for a severance as to this Defendant, and then ask that this Defendant be tried first on February 4, 1957, well knowing that Defendant's counsel would not expect such action and was not prepared for trial; all magnified by the fact that he, of necessity, knew that Defendant's counsel had for some time been overburdened and pressured in an attempt to get his personal and professional matters in shape to permit him to leave on a World Cruise. Such basically unfair tactics and pressures cannot be too strongly condemned and should not be countenanced by any Court.

The Government's motion, insofar as it relates to a severance for this Defendant, obviously should have been granted a year ago. However, considering this motion as a whole, with its attempt to force this Defendant to trial

first, its reference to Mr. Sobieraj, his plea of guilty, his making evidence available, and the fact that he was
194 to be a witness for the Government, and in the light of the other facts herein, it smacks a bit of administrative pressure to force this Defendant, and probably the others, to plead guilty. Much the same tactics appear in the proceedings of January 23, 1956. This is much the same type of abuse of power which led to the mess in the Goldberg case, 53 CR 158; and resulted in the reversal of the Koplin case. *United States* v. *Koplin* (C A 7), 227 Fed. 2d 80. As would appear from some of the cases cited herein (and in others which have come before this Court of which this Court will take judicial notice) the United States Attorney has been detected in various instances as being a bit reluctant to recognize and protect the rights of a defendant in a criminal case; rather there have been occasions when he is a bit inclined to take unfair advantages of them or their counsel. His actions in this case create the effect of a psychological warfare against defendants to compel them to plead guilty!

III.

The Government's Motion to Proceed to Trial as to This Defendant on February 4, 1957.

This motion really comes as a surprise. Months ago, in either September or October, 1956, the United States Attorney, after again advising this Defendant that he would not agree to a severance, a bit casually stated that even if such a severance were granted, he would then try the Defendant first. Defendant's counsel pointed out to him that while this was his prerogative, such a procedure was neither practical, feasible, or legal and seemingly he recognized that fact. It was also emphasized to him that it would cause great inconvenience

to Defendant's counsel who would have to spend considerable time in preparing motions which had not been filed and in preparing for trial, if this Court required him to
195 go to trial, and particularly so since he was attempting to arrange his personal and professional affairs to leave Chicago about March 20, 1957 to be gone until July. And, that if this was really his intention, he should make the motion forthwith so Defendant's counsel would know where he stood could prepare and present adequate motions, and would have ample time to prepare for trial if required. Instead, he persisted in asserting that he would not agree to such a severance and insisted he was going to try all these defendants together well knowing he could not legally do so.

From at least October of 1956, up to and including the date of his present motion, the U. S. Attorney never once again mentioned the fact that he would ask for a severance and that as a part thereof he intended to force his Defendant to trial first, all the time knowing that Defendant's counsel was having much difficulty getting his various personal and professional affairs in shape to leave on a World Cruise on or about April 1, 1957. Instead he persisted in his position as aforesaid. He would thus lull this Defendant and his counsel into a false sense of security. During all this same period, he was urging this Defendant to plead guilty before testifying for the Government, and was ever increasingly and more strongly advised that this Defendant would not so do, all as far back as a year ago, and up to and including the very date of his motion (Friday, January 18, 1957).

During the last several months, Defendant's counsel repeatedly stressed to the United States Attorney that in view of his contemplated cruise and the difficulties of getting all his affairs in shape he had to know what the Government intended to do on February 4, 1957, so that

the rights of this Defendant could be adequately protected and so that this Defendant and his counsel would not be caught by any "surprise tactics" of the Govern-
196 ment. Confronted with much procrastination, Defendant's counsel finally, at about 2:00 p.m. on January 18, 1957, advised the United States Attorney that since he could not make up his mind or would not tell, he, Defendant's counsel, had no alternative but to present the matter to this Court and request this Court to compel him to make his position clear so that all counsel would know what to expect and how to proceed, and that he would immediately prepare the necessary documents. Apparently only then did the United States Attorney prepare the present motion. He may have intended to make this motion on February 4, 1957, the date of the trial.

IV.

Defendant's Substantial Rights Herein.

A defendant when called upon to testify as against his co-defendants acquires certain additional and greater rights than other Defendants. In the Whiskey cases, 99 U. S. 594, 25 L. Ed. 399, the Supreme Court of the United States states:

> "Accomplices in guilt, not previously convicted of an infamous crime, when separately tried are competent witnesses for or against each other; and the universal usage is that such a party if called and examined by the public prosecutor on the trial of his associates in guilt, will not be prosecuted for the same offense provided it appears that he acted in good faith and that he testified fully and fairly."

In the case of *United States* v. *Lee*, 4 McLean 103, Judge McLean said:

> "An accomplice is used by the government because

his evidence is necessary to a conviction. Being called as a witness there is an implied obligation by the government, if not expressed, that if the witness shall make a full and honest disclosure of the facts which
197 have a direct bearing on the case he shall not be prosecuted. * * * In the case of Lee, he was used as a witness with the understanding that he would not be prosecuted to conviction, provided he made a full disclosure in regard to the acts of Warner. The court have heard his evidence and there seems to be no doubt that the disclosures made by the witness were true. He implicated himself, being the driver of the mail stage, but he was instigated to do the act by Warner, who was a much older and more experienced person. The court think Lee as a witness has acted in good faith and that the acquittal of Warner by the jury in no respect affects the right of the witness to claim an exemption. The government is bound in honor, under the circumstances, to carry out the understanding or arrangement by which the witness testified, and admitted, in so doing, his own turpitude. Public policy and the great ends of justice require this of the court. If the district attorney shall fail to enter a nolle prosequi on the indictment against Lee the court will continue the cause until application can be made for a pardon. The court would suggest that to discontinue the prosecution is the shorter and better mode."

In the case of *Russell* v. *U. S.* (C. A. 6), 12 Fed. (2d) 683 the court said (page 688, note 6):

"Independently of statute, the universal usage is that an accomplice, if called and examined by the public prosecutor on the trial of his associates in guilt will not be prosecuted for the same offense, provided it appears that he acted in good faith and that he testified fully and fairly. The rule is that the witness thereby obtains an equitable right to a pardon; and while he cannot by law plead such facts in bar of an indictment against him, nor avail himself upon his trial of his equitable right to a pardon, such right will

be respected to the extent of giving opportunity for such application, even by postponing the trial, if necessary, for that purpose. Whisky Cases, 99 U. S. 594, 25 L. Ed. 399; *United States* v. *Lee*, Fed. Cas. No. 15,588, 4 McLean 103."

198 As Defendant's counsel would interpret these cases, they seemingly recognize that if an accomplice is used by the Government because his evidence is necessary to a conviction of other defendants, and he fully and freely testifies as to the facts, there is an implied agreement by the Government that he will not be prosecuted. This theory of the law is but consistent with the theory expressed by rather numerous "immunity statutes" applying to certain other Federal offenses.

Recognizing such a Defendant acquires such a right, it is equally clear from the cases as to how he is to assert that right. His most substantial right as it appears from these cases is to a pardon through the Executive Branch, or more practically a dismissal and a continuance through the Judicial Branch of his case until he has an opportunity to obtain or is given such a pardon or dismissal. In any event the Court will not proceed further with his case until and unless the Executive Branch has discharged its obligation to him.

The motion of the United States Attorney to try this Defendant first on February 4, 1957, is not in good faith, and is a deliberate attempt to deprive this Defendant of his substantial rights and circumvent the utterances of our Supreme Court as aforesaid.

In paragraph 2 of his motion he admits that this Defendant's counsel has repeatedly assured him that this Defendant will be available to testify against these other Defendants. In paragraph 3 of his motion he misrepresents the true facts to this Court by stating only that the Defendant, Joseph T. Marzec, can present valu-

able and direct evidence which "will materially shorten the trial" as to the Defendants Brandt and Kusper. He was duty bound to have disclosed to this Court that his entire case against these Defendants is dependent upon
199 the testimony of Defendant Marzec. In paragraph 5 of his motion, he proposes to this Court that he will be ready for trial against these other two Defendants immediately upon completion of the trial as to the Defendant Marzec, and that he "will call Joseph Marzec as its witness upon such further trial of the Defendants Brandt and Kusper." Thus this United States Attorney unfairly and overzealously proposes to get and admits he proposes to get the full benefit of this Defendant's testimony against these other Defendants and simultaneously would put him to trial first and thus attempt to deprive him of his substantial rights as defined by the United States Supreme Court. (*Cf. Korer* v. *U. S.*, 52 CR 587).

That the United States Attorney has been fully cognizant of this defendant's substantial rights to have this case dismissed is best emphasized by the "legal" gymnastics he has been indulging in to cause this Defendant to waive or lose those rights. He opposed this Defendant's legally sufficient motion for a severance in January of 1956; he then attempted to induce this Defendant to appear as a "bona fide" witness at a joint trial and volunteer to testify under Section 3481 so that he would be held to have waived such immunity. *Johnson* v. *U. S.*, 271 U. S. 494. Frustrated in that effort he then attempted to have this Defendant plead guilty. He continuously sought to confuse Defendant's counsel with his untenable factual and legal positions and refused to frankly state his position to this court or defendant's counsel. Then, on the eve of the trial, well knowing that this defendant's counsel had filed none of the appropriate motions on his client's behalf in preparation for trial and was wholly unprepared for trial, he would

drastically shift his position (he did an about face), insist on a severance and would try him first so that he could call this Defendant "as a witness under subpoena in the trial of the other two defendants in the cause"—"because
200 we wish no confusion in the record as to any possible equitable immunity insofar as we can control it with relation to the defendant Marzec," all done with much misrepresentation of the true facts to this Court and an over-reaching and misleading of this Defendant and his counsel. Thus we have the Goldberg and Korer cases all over again but with different issues and different defendants.

In summary, it is clear beyond argument that without the cooperation, information and testimony offered by this defendant and accepted and availed of by the government, there would have been no possibility of indicting and successfully prosecuting the other defendants. Thus, this defendant has contributed much more than his share of the usual bargain of an accomplice who merely testifies against the other defendants who have already been indicted.

V.

The Insistence of the United States Attorney That This Defendant Plead Guilty.

The United States Attorney would insist upon and would use the pressures of this office to force this Defendant to plead guilty. Of course, he has no such rights and his action to that effect is a most clear abuse of his great powers. The Defendant and his counsel fully recognize that this Defendant is not without culpability. But, that does not mean that he must plead guilty because the United States Attorney insists. Even if it were the case that he had no rights of implied immunity and no sound motions were available to him to dismiss this indictment, yet, under the overall facts of this case, there is much in mitigation

and defense of the acts of this Defendant. It just might be that it is for his best interests to stand trial. This is a matter for him and his attorney to determine at the
201 proper time and after proper motions on his behalf have been prepared, submitted to this Court and disposed of by this Court. All, if the United States Attorney is sincere in his request to put this defendant to trial.

The United States Attorney has no right to urge upon any Defendant that he waive any right which he may have. Should this Defendant enter a plea as the United States Attorney is seemingly determined to exact, then he might waive his substantial rights. (*King* v. *U. S.*, C. A. 8, 203 F. 2d 525.)

The United States Attorney should recognize that had this Defendant hired and been represented by competent counsel of his own choice at the early stages of this investigation, he and his then counsel would have forthwith given to the Bureau investigators (and if they were not interested, to their superiors) the facts and cooperation which much later he and his counsel gave to the United States Attorney. Defendant's counsel represents to this Court that had this procedure been followed, fair minded competent Bureau officials from the very beginning would have considered him, and had to consider him, a required government witness, his prosecution would never have been recommended and he would never have been indicted.*

* For five years, from 1946 to 1951, defendant's counsel was Regional Counsel of the Penal Division of the Bureau of Internal Revenue, Region II, which covered 16 Midwest states. As such Regional Counsel, all cases of all taxpayers of this area proposed for prosecution had to clear his desk and he made the determination as to whether or not the cases of these taxpayers should be cleared into Justice for prosecution or whether they should be sent back for civil settlement. Thus, he can make the above representation to this Court with safety as an expert, having in mind a comparable case which he disposed of consistent with the authorities cited herein.

The United States Attorney on January 23 admitted "In the first instance this case was originally prepared and developed by the Internal Revenue Service as to the defendant Marzec only." This means here that the Bureau "loaded" this case into Justice recommending only
202 the prosecution of Marzec and charged all these commissions to him as taxable income. It is most surprising that before this was done some reviewer within the Bureau did not "catch" what was going on and order further investigation unless much evidence against these other Defendants was suppressed or destroyed during the course of the investigation. The case against this Defendant only should have appeared just too perfect as witness the affidavits of these other Defendants that they had not shared in commissions running into thousands of dollars which were being received by an "employee" of the Union. That this Defendant was then being "framed" would seem conclusive from the facts this Defendant furnished the United States Attorney; the additional facts he admittedly has uncovered; and his own success herein once he accepted this Defendant's offer. Aside from any questions of his duty to dismiss; the United States Attorney, if he would try this Defendant first or last or ever, should first be required to forthwith produce all pertinent evidence now in his possession that this Defendant may well have been "framed" as aforesaid. He should not be permitted to suppress evidence beneficial to a defendant (*Goldberg* v. *United States*, 53 C. R. 158). Accordingly, if the United States Attorney would proceed as indicated it is most respectfully requested that this Defendant is entitled to an order of this Court, and he so moves, that he first produce and make available to this Court and Defendant's counsel all the facts with his possession to establish the fact that this Defendant had been "framed" or admit that fact in open Court. He should know. He would try this Defendant first. He should first produce and disclose.

203 VI.

Defendant's Counsel.

A year ago, when this case first was called by this Court, this Court gave the Defendants ample time to file adequate motions. Recognizing that his client had been and was cooperating with and was a required Government witness against the others, and presuming that the United States Attorney would recognize controlling Supreme Court authority theretofore furnished him, there was no need for this defendant to then file any motions other than a motion for severance, which he filed.

This Court and Government counsel were advised last September that this counsel had made arrangements to go on a World Cruise, leaving around April 1, 1957, leaving Chicago on or about March 20th.

This counsel practices alone. All his work is personal, and it is a most difficult task for him to get his professional and personal matters in shape so that he can leave on an extended tour for a period of four months. He attempted to get these matters in shape as far back as last September. Most of them are Government matters, and for some reason or other, it now appears, as is quite usual, that their disposition has been delayed and they all should be taken care of or require care before he leaves. Unfortunately, the Government's drastic change in this case has already used up the last ten days of this counsel's time, in deferment of other pressing matters. He tried a case in the Tax Court last June, filed his briefs last September, it has not been decided yet, and a decision may be forthcoming any day. If he is successful, there are other matters which must be taken care of immediately, and will take at least a week's time. If unsuccessful, he must get the record ready for the Court of Appeals. Again, another matter
204 lying dormant for several years broke around Christ-

mas time, and now he must prepare a petition to the Tax Court before he leaves. This counsel must prepare and file Income Tax Returns. It is not his purpose to burden this Court with his many other matters, professional and personal, that must be taken care of before he leaves. Should this Court desire more detailed and additional facts they will be supplied.

Defendant's counsel frankly represents and states to this Court that he presently is not prepared to go to trial in this case and has to date made no preparation whatsoever to do so. It is most respectfully submitted that in view of the facts herein set forth he need apologize to no one for this representation and statement.

Defendant's counsel states his firm belief that as a matter of law there exists on behalf of this Defendant a right to be protected from continued prosecution in this case. That even aside from any such question the prosecution of this Defendant in the light of the facts herein is so repulsive to a due and proper administration of justice that such prosecution would be unsuccessful.

Defendant's counsel had a right to assume that once the cases of the other Defendants herein were disposed of, the United States Attorney would at least then frankly state to this Court the true status of and situation as to this Defendant; that this Court would then afford the parties ample time to work out a disposition of Defendant's case satisfactory to this Court, the Government and this Defendant; and that this counsel could impress upon the United States Attorney—or his superiors—their duty to dismiss. From past experiences this Counsel can safely represent to this Court that this may take considerable time. The problem is essentially administrative, as appears from the decisions herein.

205 Defendant's counsel frankly represents to this Court and states that to force this Defendant to trial first —

under the above circumstances without affording a most ample opportunity to most fully prepare any and all motions required to protect his rights herein; without then disposing of said motions in an orderly manner and upon full hearing; and then without affording him and his counsel most ample time to prepare for trial (here not before the fall of 1947) might well constitute reversible error, create an abortive trial, and seemingly would be contrary to the admonishments of our Court of Appeals in the Koplin case.

If this Defendant is to be put to trial as the Government designs, it means that the Government has unfairly and unconscionably taken advantage of this Defendant, lulled him into a false sense of security, and would turn against him all of the information, disclosures, leads and testimony which was received from him. Under these circumstances, there can be no doubt that this counsel would be required to investigate the nature and extent of all information, disclosures, leads and testimony furnished directly and indirectly by this defendant and his counsel with the view of preparing and presenting a full and adequate motion to suppress all such evidence as against this defendant. Cf. *U. S.* v. *Shotwell Mfg. Co.* (C. A. 7), 225 F. (2d) 394. The work of investigating and preparing this motion and other appropriate motions would consume a period of several months and could not be accomplished, and trial held, before this counsel's departure on said trip.

Defendant's counsel represents to this Court and states that the documents prepared herein were prepared under much pressure with a most limited available time—in fact he had to employ other counsel to come to his assistance. It is to be recognized:

1. The alleged conversations with the United
206 States Attorney took place with one or more of his assistants; that they may not have taken place in

just "so many words" but the words as used reflect the substance intent and object of said conversations.

2. That as to time of same, it is his best recollection that these conversations took place in relation to certain specific events—and when their dates are fixed by months—it may be a month earlier or later. There were many conversations leading up to and during the furnishing of this defendant's testimony information and facts extending over a period of at least a year resulting in the indictment of these other Defendants. And again there were many conversations in connection with this defendant's motion for a severance. As to the last series of conversations it is the counsel's best recollection that they commenced perhaps even before September of 1956 and up to January 18, 1957.

3. That this counsel may well have overlooked other facts and issues which may be most beneficial to his client and he reserves the right to assert these other facts and issues at some future date. In addition having been "caught by surprise" he has not been able to give the issues herein such legal research as they may require.

4. As to the motions he should file on this Defendant's behalf; he most certainly should file a rather lengthy motion to dismiss on constitutional grounds of similar purport and effect to the one he filed in the case of *United States* v. *Sam Achilli*, 53 C. R. 154 which motion was denied by the trial court without opinion and to which motion reference is made. Basically it is this Counsel's position that there is a flagrant denial of due process in the administrative procedures which are the very foundation of all these income tax prosecutions. The Bureau operating without regard discernible standards of administration action promiscuously seizes upon the cases of certain taxpayers for prosecution and simultaneously stifles the prosecution of other cases of other
207 taxpayers of greater delinquency and flagrancy, all without the semblance of fairness or equality of treatment. This is a government of men and not of law.

And obviously a denial of due process. Witness what may well have gone on here. Obviously discovery motions should be filed seeking to discover why this Defendant was not from the very beginning of the investigation considered only as a required witness against these others but rather used as a means to stifle their prosecution.

5. This Counsel has done the best he could herein. He has attempted, within a most limited time, to fairly appraise this Court of the status of this Defendant herein—and the issues here involved—and at the same time protect the substantial rights of this Defendant.

This counsel has been informed and believes and upon such information and belief states that the United States Attorney had full personal knowledge of the offer of said Marzec as aforesaid and the circumstances under which he furnished testimony information and cooperation; that he personally insisted that use be made of Marzec, his testimony, information and cooperation despite rather strenuous objections of persons within the Bureau; that he personally concerned himself with this case and had both general and specific knowledge of what has gone on to date in said case; and more particularly that he had at least a general knowledge of the substance of this counsel's conversations with his assistants. He is entitled to much credit for his actions and success in bringing these other Defendants to the Bar of Justice and as of this date the successful prosecution of at least one of them.

This Counsel again on information and belief as aforesaid states that said United States Attorney had full personal knowledge of said motions presented to this Court on January 23, 1957 and that it was his determination that such action should be taken. This is most regrettable.

208 **Conclusion.**

In the light of the foregoing, this defendant has a clear right to have his motions granted and the cause continued, as prayed for and such further relief as this Court may deem proper.

Respectfully submitted,

Joseph A. Struett,
Attorney for Joseph T. Marzec, Defendant.

209 State of Illinois, }
County of Cook, } ss.

Joseph T. Marzec, being first duly sworn, on oath deposes and says that he is one of the defendants in the above entitled cause; that he has read the above and foregoing motions being made by him to vacate the order entered in said cause on January 23, 1957, setting his trial for February 4, 1957, before the trial of the co-defendants in said cause, and also for a continuance and other relief, and that he has also read the above and foregoing brief in support of said motions, and that he knows the contents of said motions and said Brief, and that the facts set forth in said motions and in said Brief insofar as they are based on his personal knowledge are true and correct, except as to any matters therein set forth upon information and belief, and as to any such matters so set forth upon information and belief, he believes them to be true.

Joseph T. Marzec.

Subscribed and sworn to before me this 29th day of January A.D. 1957.

Christine Codner,
(Seal) *Notary Public.*

210 State of Illinois, } ss.
County of Cook. }

Joseph A. Struett being first duly sworn, on oath deposes and says that he is the attorney for the defendant Joseph T. Marzec in the above entitled cause; that he prepared the above and foregoing motions by said defendant to vacate the order entered in said cause on January 23, 1957, setting the trial of said defendant for February 4, 1957, before the trial of his co-defendants, and also for a continuance and other relief in said cause; that he also prepared the above and foregoing brief being filed in support of said motions; that the facts set forth in said motions and in said brief insofar as they are based upon his personal knowledge are true and correct, except as to those facts set forth therein upon information and belief, and as to such facts set forth therein on information and belief, he believes them to be true.

Joseph A. Struett.

Subscribed and sworn to before me this 29th day of January A.D. 1957.

Christine Codner,
(Seal) *Notary Public.*

211 Defendant's Exhibit A.

Transcript of Proceedings (of January 23, 1957) had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Wednesday, January 23, 1957, at 10:00 o'clock a.m.

Appearances:

Hon. Robert Tieken, United States Attorney, (450 U. S. Court House, Chicago 4, Ill.), represented by Albert F. Manion, Esq., on behalf of the Government;

Bernard H. Sokol, Esq., on behalf of Defendant Stanley T. Kusper;

Messrs. Breen, Brumlik & Schaffenegger, (209 S. LaSalle St., Chicago 4, Ill.), represented by Edwin T. Breen, Esq., and John V. Schaffenegger, Esq., on behalf of Defendant Frank A. Brandt;

Leo Klein, Esq., (10 S. LaSalle St., Chicago 3, Ill.), on behalf of Defendant Bruno L. Sobieraj;

Joseph A. Struett, Esq., (105 W. Madison St., Chicago 2, Ill.), on behalf of Defendant Joseph T. Marzec.

And thereupon the following proceedings were had herein:—

By the Clerk: No. 55 CR 679, United States of America *vs.* Frank A. Brandt, et al.

Motion of the Government for severance for trial of defendant Joseph T. Marzec.

By Mr. Manion: If the Court please, one of the defense attorneys has not yet arrived, Mr. Bernard Sokol.

212 Do you want to pass this for a moment until he arrives?

By Mr. Struett: If the Court please, I could be heard on my motion. It is very short.

The motion does not give us very much time. It sets up facts; it is not verified, it contains no brief.

I would like ten days to answer, verified, and I will have my brief on file as required.

By the Court: What is the motion?

By Mr. Manion: Your Honor, this is a motion by the United States asking for a severance of the defendant Marzec from the defendants Brandt and Kusper, for trial.

Exactly a year ago today, your Honor, this Court heard various motions for severance filed on behalf of each of the defendants in the case. At that time the United States opposed such severance.

The motion this morning admittedly is a drastic change in the Government's position in this matter.

The reason for the motion at this time is this: The defendant Sobieraj, as of last Friday, appeared and entered a plea of guilty, and has indicated that he would testify for the Government if called as a witness. And we have advised the attorneys representing the other defendants—

(At this point there was an interruption of the proceedings, due to a disturbance in the corridor outside the court room door; after which the following further proceedings were had herein:—)

By Mr. Manion: To resume, your Honor, this motion this morning represents a substantial change in the Government's position, as we realize.

And the reason for it is prompted by the entry of a plea by the defendant Sobieraj—

By the Court: What was that last name? I didn't get it.

213 By Mr. Manion: The reason for this motion has been prompted in the first place by the entry of the plea by

the defendant Sobieraj, and an indication by him that he will be willing to testify on behalf of the Government.

He has also made available to the United States additional documentary evidence, which we have not had previously. And we have been examining it since Friday, when we received it.

If counsel for the defense desires to see that evidence we will be able to make that available to them.

I tell them that now for the record.

In the first instance this case was originally prepared and developed by the Internal Revenue Service as to the defendant Marzec only.

The defendant Marzec at his own request and by advice of counsel—and I think Mr. Struett will tell you this—appeared before the Grand Jury and gave testimony, which led to the inclusion of the other three defendants.

The United States attorney has been under the impression that the defendant Marzec would be available to testify for the Government in this case even though he was a defendant. However, Mr. Struett has now advised us that he will not be available to testify for the Government so long as he remains joined to the other defendants for trial.

His testimony is the best direct evidence to the defendants, and we believe by using the defendant Sobieraj, who has pleaded guilty, and if we can call the defendant Marzec we may very well shorten this trial and avoid many complicated issues and circumstantial proof.

Now, in fairness to Mr. Struett I will say for the record at this time that Mr. Struett has not represented to the United States that he would permit us to call Mr.
214 Marzec as a witness, or that he would make Mr. Marzec available to us if we were to try Mr. Marzec in advance of the other two defendants. He has petitioned the Court for a severance as to Marzec, and to continue his trial until a later date.

However, it is the position of the United States that we would prefer to try the defendant Marzec first, because we wish no confusion in the record as to any possible equitable immunity in so far as we can control it with relation to the defendant Marzec.

There has been no deal made with him. That is not the reason for this. We believe the only reason we are estopped from calling him under the present status of the case is under Section 3481, Title 18, prohibiting a defendant from appearing except at his own request.

It is our understanding of the law that if the severance is granted the defendant Marzec, as to a separate trial, that he then may be called by the Government as a witness under subpoena in the trial of the other two defendants in the cause. And that is essentially the reason for the motion.

I would also advise the Court, and the other defense attorneys, that as of yesterday the United States has obtained new and additional evidence as to the defendant Brandt and the defendant Kusper.

That evidence has just come in to our possession, and only partially examined at the time, as of yesterday. I believe that we shall have to file, in fairness to the defendants, and as a part of the record, an amended bill of particulars, which we will attempt to do by Friday, as to the other two defendants.

That additional evidence may very well afford an additional reason as to severance for trial as to them, because at the time these motions for severance were argued
215 before the Court a year ago today, at that time to the knowledge of the United States the evidence would be essentially the same as to all four defendants. But at this time, as of yesterday we have received additional facts which would tend to throw light upon the guilt or innocence of the defendants Brandt and Kusper which would not include the defendant Marzec.

By Mr. Struett: Well, if your Honor please, I would like to answer these questions or these statements under oath, and file a brief.

This is a complete change of position, and it is very prejudicial to the rights of my defendant.

By the Court: In what respect?

By Mr. Struett: In every respect. I would like to argue it. I am working on an answer and a brief, and I would like to have it on file, and I would like to argue it.

By the Court: When do you want to try this case?

By Mr. Manion: The matter has been set for trial for February 4th, your Honor, and the Government will be prepared to proceed at that time.

By the Court: What is the number of the case?

By Mr. Manion: It is 55 CR 679.

By the Court: What time was it started?

(Documents handed to the Court.)

By the Court: It was started almost two years ago. It is almost time to dispose of it.

By Mr. Breen: If the Court please —

By the Court: Wait a minute.

Now, if defendants in a criminal case have rights to be tried together that is a new one to me.

Is that what you contend?

By Mr. Struett: No. And I don't like to get in an
216 argument here on a motion where I want to file an answer and a brief on it.

By the Court: No. I just want to find out what possible issues could be made on the motion of the Government for a severance.

By Mr. Struett: They should have told your Honor a year ago that they can't make out a case without my defendant.

By the Court: Well, that may be.

By Mr. Struett: Then they come in here, and they re-

fuse a motion for a severance, and now at the last minute, knowing that I am not ready for trial, and then they want to put my client to trial first, ahead of the other defendants and deprive them of substantial rights which he admits we may have under Supreme Court authority.

By the Court: My dear man, your client has been a defendant in this court since the early months of 1955.

By Mr. Struett: I understand.

By the Court: He has pleaded not guilty.

By Mr. Struett: I understand.

Now, they have completely changed their position. And I would like to answer this motion, and I would like to file a brief.

By the Court: Now, tell me, what objection can you make to a motion for severance?

By Mr. Struett: I have no objection to the motion for severance.

By the Court: Motion for severance is granted.

By Mr. Struett: All right.

By the Court: Now, what else?

By Mr. Struett: Now, I don't know whether these other defendants—

217 By the Court: What else is there to be determined?

By Mr. Struett: Then he wants to try my man first. I want to answer to that part of his motion.

By the Court: Well, tell me what objection you can have?

By Mr. Struett: Why, I am not ready for trial. It would be prejudicial of my client's rights. And it is a flagrant violation, how he misled me in this matter. And I will set it up under oath; that is exactly the situation, I will set that up by verified motion and answer, and give you the facts and the law. That is all I want to do.

By the Court: Well, you have been standing here on a plea of not guilty for almost two years.

By Mr. Struett: Certainly I have, and presuming that he would have to use my client, and would use my client.

By the Court: You say he won't be available to him.

By Mr. Struett: I haven't said that.

By the Court: He stated that.

By Mr. Struett: No, he didn't. He has known all the time my client would be available.

By the Court: Is that right?

By Mr. Manion: Mr. Struett advised me as of last week—and I think Mr. Struett will agree with me—that as long as Mr. Marzec remains joined with the other defendants for trial that he would not be available to the Government as a witness.

By Mr. Struett: My client has been available.

By the Court: Have it ready for trial on the 4th of February at 10:00 o'clock.

By Mr. Struett: Can I file an answer to this motion?

By the Court: The motion is granted. You said you had no objection.

218 By Mr. Struett: To the severance.

By the Court: Your case has been set for lo these many months—time for you to go to Europe and come back.

By Mr. Struett: If your Honor please, is it your contention—?

By the Court: Get it ready for trial on the 4th of February.

By Mr. Struett: If the Court please, I want to file an answer to his motion to try my defendant first.

By the Court: Well, the whole case has been set for the 4th of February, and it is not going to be changed; you are going to trial on the 4th of February.

By Mr. Struett: If your Honor please—

By the Court: (Addressing the Clerk.) Call the next case.

By Mr. Breen: If your Honor please, may I be heard just a moment? This is another aspect of the case. We represent different defendants.

By the Court: What do you want to say?

By Mr. Breen: I represent the defendant Brandt. And up to this time until this surprise change in tactics my defendant was to stand trial jointly with the other defendants. Now, ten days before trial there is a shift in position by the Government, and the case is set for trial, in so far as Brandt is concerned, and Kusper, represented by Mr. Sokol, for February 4th, the same date he is going to trial. How can we get ready for trial, we would have to reset that date.

By the Court: You will go to trial immediately after the other gentleman.

Call the next case (addressing the Clerk).

By Mr. Sokol: If the Court please—

219 By Mr. Struett: If your Honor please, I assume that I may have an objection to your Honor's ruling. And I would like to have a copy of this transcript as soon as I can get it.

By the Court: You make your business arrangements with the Reporter outside of court, if you please.

By Mr. Sokol: If the Court please, I represent Stanley Kusper. And I don't want to make any representations consonant with what has been said before, so I don't want to inherit some of the Court's reactions.

By the Court: Now, I have heard a good many motions on this. Make your motion, quickly.

By Mr. Sokol: I would like to move that the defendant Kusper be tried separately from the defendant Brandt.

By the Court: Any objection?

By Mr. Manion: We have no objection at this juncture of the case. We have heretofore advised the Court that we felt that these men could in all fairness be tried

together, and we see no inherent prejudice to the defendants Brandt and Kusper if they remain jointly tried. If they remained joined for trial we believe that they can be fairly and expeditiously tried together. However, if the Court would prefer otherwise in its discretion—

By the Court: Having granted one severance, you may have a severance. You gentlemen be ready in order because I will try you all right straight through.

By Mr. Sokol: Very well.

Now, I have one other matter to mention, and I think Mr. Manion will bear me out. I have been working pretty hard on this case, and I have been getting ready.

By the Court: Now—

By Mr. Sokol: Let me finish, if your Honor please.

220 By the Court: Well, I am telling you you will be ready for trial just as soon as I finish the cases in order.

By Mr. Sokol: There has not been one single continuance asked for by me.

By the Court: Listen.

By Mr. Sokol: But, your Honor, you won't let me finish. I want to ask for certain discovery, your Honor.

By the Court: Listen. If you don't quit talking when I talk I will have you removed. When I talk I talk, and nobody interrupts me. Don't try to talk me down.

Now, what is your further motion?

By Mr. Sokol: My further motion is this: In view of the fact that Mr. Manion has indicated that he is going to file a new bill of particulars, and in view of the fact that he has come into possession of new evidence, and that this Court has refused certain motions I have made under 17(c) and under Rule 16, and the fact that Mr. Manion has not had an opportunity to look at this—and he tells me that he is not yet finished with it—that I be given leave, and I expect to file motions under 17(c) and 16, so that I may find this new discovery.

By the Court: This new matter, tell them about it in your bill of particulars. When are you going to file it?

By Mr. Manion: I will file it on Friday.

By the Court: File it on Friday.

And you gentlemen be ready for trial in order—alphabetical order after this one defendant—

By Mr. Manion: Marzec.

By the Court: After Marzec. In alphabetical order.

221 Certificate.

I hereby certify that the above and foreging transcript comprising pages numbered consecutively from 1 to 16 is a full, true and accurate transcript of my original shorthand notes of the proceedings had upon the hearing of the above matters in the aforesaid cause on Wednesday, January 23, 1957.

Roy E. Fuller,
Official Court Reporter, United States District Court, Northern District of Illinois.

January 23, 1957.

222 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-CR-679) • •

Tuesday, January 29, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This day comes the United States by the United States Attorney comes also the defendant Frank A. Brandt in his own proper person and by his counsel and by leave of Court first had and obtained withdraws his plea of not guilty heretofore entered as to Count 1 of the Indictment and being now arraigned upon said count pleads guilty thereto and on motion of the Government by the United States Attorney it is

Ordered that Count 2 of said indictment be and the same is hereby dismissed as to said defendant and it is

Further Ordered that this cause be and the same is hereby continued to February 4, 1957 at 10 A. M. for disposition as to the defendant Frank A. Brandt.

223 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR-679) * *

GOVERNMENT'S ANSWER TO MOTIONS OF DEFENDANT JOSEPH T. MARZEC TO VACATE ORDER ENTERED JANUARY 23, 1957, AND FOR CONTINUANCE AND OTHER RELIEF.

Now comes the United States of America by R. Tieken, United States Attorney for the Northern District of Illinois, and in answer to motions of defendant Joseph T. Marzec to vacate order entered January 23, 1957, and for continuance and other relief, states:

I.

In Answer to Motion to Vacate Order Entered January 23, 1957:

1. In answer to Paragraph Number One of said motion, the Government admits that notice of such motion was mailed to the defendant Marzec on Friday, January 18, 1957, and that such notice was served five days prior to hearing on such motion, including the intervening Sunday. The
224 Government further admits that such motion came on for hearing on Wednesday, January 23, 1957, rather than on Monday, as provided in Rule 3(a) of the Criminal Rules adopted by the United States District Court for the Northern District of Illinois. The Government further states that such motion and notice thereof, together with the supporting affidavit as to the mailing of such notice, was filed with the Clerk of the United States District Court for the Northern District of Illinois on Friday, January 18, 1957. The Government denies that any other or further supporting affidavits are or were required in support of such notice and motion. The Government states that such

motion was for a severance of the defendant Marzec from the other defendants for trial and that such motion was not opposed by defendant Joseph T. Marzec and that no objection thereto was made in his behalf.

2. In answer to Paragraph Number Two of such motion, the Government admits that such motion was for the purpose of severing the defendant Marzec from the other defendants for trial, but denies that such motion is or was designed to deprive the defendant of any rights to executive clemency or to postponement of trial or otherwise. The Government further denies that the defendant in fact or in law has such rights to executive clemency or to a dismissal of the pending indictment against him or to postponement of trial, as alleged and set forth in such motion.

225 3. In answer to Paragraph Number 3 of such motion, the Government states that at all times from and including November 8, 1954, at which time counsel for the defendant first presented a transcribed statement of the defendant Marzec to representatives of the Internal Revenue Service and the United States Attorney and until on or about January 12, 1956, counsel for the defendant Joseph T. Marzec stated and represented to such representatives of the Internal Revenue Service and the United States Attorney that the defendant Marzec was willing and desirous of testifying for and on behalf of the Government as to the culpability of the co-defendants Frank A. Brandt, Stanley T. Kusper and Bruno J. Sobieraj and that counsel for the defendant Joseph T. Marzec, as well as the defendant himself, understood and agreed that no promise of immunity, dismissal, pardon, or other consideration would be given, offered or made to the defendant Marzec in return for such testimony as to the co-defendants. The Government further states that on or about January 12, 1956, counsel for the defendant Marzec first represented to the United States Attorney that if defendant Marzec should ap-

pear and testify as against his co-defendants that he, Marzec, might claim equitable immunity. The Government further states that immediately thereafter on divers occasions and including January 23, 1956, before the defendant Marzec's original motion for severance came on for hearing, that the United States Attorney and his Assistants
226 at all times advised counsel for the defendant Marzec that the Government did not agree with such contention on the part of the defendant and that it was the intention of the Government to proceed to trial as against all defendants jointly in reliance upon the procedure and authority of *United States* v. *Beck*, CA 7 1941, 118 F. 2d 178, 183. The United States Attorney and his representatives further advised counsel for the defendant Marzec at all times from and after January 12, 1956, that in the event a severance should be obtained or granted as to defendant Marzec from the other defendants for trial that the Government would elect to proceed to trial as to defendant Marzec before proceeding to trial as to his co-defendants. The Government denies that the defendant Marzec or his counsel ever advised the United States Attorney at any time prior to January 14, 1957, that the defendant Marzec would refuse to testify as to the other defendants unless he was severed from such co-defendants for trial, and unless such co-defendants were put to trial before the defendant Marzec. The Government further states that at all times from January 23, 1956, at which time the defendant Marzec's motion for severance was denied, until January 14, 1957, the United States Attorney did not know whether the defendant Marzec would or would not offer to testify in the course of a consolidated trial on behalf of the Government as to the culpability of his co-defendants, and states that during such period of time counsel for the defendant Marzec at various times indicated to the United States At-
227 torney that they were considering entering a plea of

guilty on behalf of their client as to one court of the indictment and in the alternative were considering proceeding to trial jointly with the co-defendants and volunteering the testimony of the defendant Marzec in the course of such consolidated trial. The Government denies that any agreement was made by the United States Attorney or the Internal Revenue Service with the defendant Marzec with regard to his testimony and cooperation as to the trial of his co-defendants except that the United States Attorney has at all times from and after December 15, 1955, at which time the indictment in this cause was returned, stated and represented to counsel for the defendant Marzec that in the event such defendant did withdraw his plea of not guilty as to one of the two counts of this indictment pending against him the United States Attorney would at such time move this Court for the dismissal of the remaining count pending against the defendant Marzec. The Government further states that the United States Attorney and his representatives, as well as the representatives of the Internal Revenue Service, have at all times expressly advised counsel for the defendant Marzec that the Government did not and would not consent to any agreement with regard to the dismissal of the entire indictment against the defendant Marzec and would not elect to proceed to trial as to the co-defendants before trial as to the de-
228 fendant Marzec. The Government further states that no offer or inducement has at any time been made to the defendant Marzec or to his counsel for the purpose of obtaining his cooperation or testimony other than hereinabove set forth.

4. In answer to Paragraph Number Four of such motion, the Government states that the statements made therein are argumentative and speculative. The Government further states that the other questions raised in such paragraph of this motion are moot in that the defendants Frank

A. Brandt and Bruno J. Sobieraj have previously entered pleas of guilty and the defendant Kusper has been severed from the defendant Marzec for trial.

5. In answer to Paragraph Number Five of such motion, the Government represents that the statements contained therein are argumentative and speculative.

6. In Answer to Paragraph Number Six of such motion, the Government denies that the Government's motion for severance filed on January 18, 1957, was made in bad faith and further denies that the Government has at any time in the course of preparation for trial of this cause acted in bad faith as to the defendant Marzec or as to any of the other defendants in this cause. The Government expressly denies any obligation to the defendant Marzec with regard to executive clemency or the dismissal of the indictment pending against him and denies any agreement in fact or in law to such effect.

229 7. In answer to Paragraph Number Seven of such motion, the Government denies that the severance of the defendant Marzec is in any way prejudicial to the rights of the defendant or contrary to law, equity and good conscience. The Government further states that counsel for the defendant Marzec has been advised at all times by the United States Attorney that the defendant Marzec was considered to be a real and bona fide defendant in this cause and that the Government intended to proceed to trial as to the defendant Marzec preferably jointly with his co-defendants or, in the alternative, as to the defendant Marzec in the first instance. The Government denies any intention to prejudice or surprise counsel for the defendant Marzec.

8. In answer to Paragraph Number Eight of such motion, the Government states that it is within the proper purview and authority of the United States Attorney and of the Trial Court to elect and determine the order in

which respective counts and co-defendants shall be tried where severance has been granted as between multiple defendants joined in the same indictment. The Government further states that its motion for severance as to the defendant Marzec and its election to proceed to trial as to such defendant before trial of his co-defendants was in law and in fact an ex parte matter to which no notice
230 need be given to any of the defendants. The Government further states that this cause has been set for trial on February 4, 1957, since December 5, 1956, and that the election of the Government to proceed to trial as to the defendant Marzec on that date before trial as to his co-defendants in no way operated to surprise or prejudice such defendant.

II.

In Answer to the Motion for Continuance and Other Relief:

1. In answer to such motion, the Government denies that the defendant Marzec is entitled to a continuance or postponement of his trial for the purpose of requesting executive clemency from the United States of America. The Government further denies that an agreement for such executive clemency, dismissal of the indictment, or other consideration has at any time been made by the United States Attorney with the defendant Marzec or his counsel acting on his behalf, and states the fact to be that at all times the Government has refused and rejected the requests of counsel for the defendant Marzec for such arrangement, agreement and understanding.

2. In answer to such motion, the Government objects to a continuance of this matter until the September 1957 term of the United States District Court and denies that the severance of the defendant Marzec from his co-defendants for trial has in effect operated to prejudice such

defendant and his counsel in their preparation for
230A trial. The Government further states that counsel
for the defendant Marzec has had more than adequate time to file pre-trial motions in this cause prior to February 4, 1957, and denies that the Government, through the United States Attorney or the Internal Revenue Service or any of the representatives thereof, has at any time given counsel for the defendant Marzec or the defendant Marzec himself reason or grounds to believe that such pre-trial motions need not be made or to believe that the defendant Marzec would not proceed to trial as a regular defendant in this cause. The Government further denies that any agreement has ever existed between the United States Attorney and counsel for the defendant Marzec which would lead such counsel to believe that preparation for trial was unnecessary by such counsel. The Government admits that the United States Attorney has known since sometime in September 1956 that counsel for the defendant Marzec has in fact made arrangements to go on a world cruise between March 15 and July 1, 1957, and states that such arrangements of counsel were taken into consideration in agreeing to a trial date as of February 4, 1957, and that such trial date was selected at the suggestion and with the acquiescence of counsel for the defendant Marzec.

Wherefore it is respectfully submitted that the motions of the defendant Joseph T. Marzec to vacate the order entered January 23, 1957, and for continuance and other relief, be denied.

R. Tieken,
United States Attorney.

231 State of Illinois, } ss.
County of Cook. }

Albert F. Manion, being first duly sworn on oath, deposes and says that he is the Assistant United States Attorney presently charged with the preparation and trial of the defendant Joseph T. Marzec in the above-entitled cause and has been so assigned since on or about May 20, 1956; that he has prepared the above and foregoing answers to the motions of the said defendant Joseph T. Marzec to vacate the order entered in said cause on January 23, 1957, and for a continuance and other relief in said cause; that the facts, averments and denials set forth in said answers insofar as they are based upon his personal knowledge are true and correct, and that he has been informed as to the remaining facts, averments and denials therein set forth by the persons directly acquainted with such facts, averments and denials, and that upon such information and belief he states them to be true.

Albert F. Manion,
Assistant U. S. Attorney.

Subscribed and sworn to before me this 4th day of February, 1957.

John M. Dziedzic,
(Seal) *Notary Public.*

• • • • •

45 By the Court: I understand there are two motions here upon behalf of the defendant Marzec. The order rendered on the motions of the defendant to vacate the order entered January 23, 1957, directing that the trial of the defendant Marzec proceed before the trial of the
46 other defendants, and a motion for continuance and other relief, as it is phrased here.

On page 7 of his motion the defendant says:

"Now comes the defendant Joseph T. Marzec by Joseph A. Struett, his attorney, and moves for a continuance and postponement of the time of trial of this defendant to a date following the disposition of the cases against the other defendants herein, and until action is taken by the Government to accord to this defendant his right to executive clemency and has moved for a dismissal of the indictment against him, on the basis of the agreement on behalf of this defendant with the United States Attorney, as set forth in the foregoing motion, and in the light of the affidavits set forth in the brief filed in support of this and the foregoing motion, and moves for such other and further relief as this Court may deem proper under the circumstances of this case.

"In the event that the foregoing motion of this de-
47 fendant, set forth immediately above, is denied, defendant moves for a continuance and postponement of the trial of his case from February 4, 1957, to a date in the September 1957 term of this Court, and in support of this motion, states that the Government's concededly sudden and dramatic change of position in disavowing its obligation to this defendant under its agreement, as aforesaid, and in putting him to trial, and in doing so first, before the trial of other defendants, has taken this defendant's counsel by surprise, without adequate time to recast and develop a defense and prepare and present pre-trial motions necessary if he is to go to trial, and to prepare and present evidence at such trial, none of which work and preparation was contemplated or performed while said agreement with the United States Attorney appeared to be honored by him."

The indictment in this case was returned on December
15, 1955. Mr. Marzec filed his appearance upon the following day, December 16, 1955, and counsel for the
48 defendant Marzec entered his appearance on the same date. As early as January 23, 1956 an order

was made by the Court denying the motion of Mr. Marzec for severance, and for separate trial.

On February 20, 1956, Mr. Marzec entered a plea of not guilty. The case was set for trial May 21, 1956.

On December 5, 1956 by agreement the cause was continued for trial from January 9, 1957 to February 4, 1957. I think it is a fact that the date of February 4, 1957 was fixed because counsel for Mr. Marzec indicated he contemplated a vacation trip of some sort at a somewhat later date.

49 I don't think any adequate reason has been set forth for a continuance. The case has been standing on a plea of not guilty for almost eleven months, all of eleven months.

The plea of not guilty was entered on February the 20th, 1956—twelve months, all but sixteen days, ago, and such preparations as were necessary to be made should have been made during this interval.

Accordingly, the motion for continuance, for whatsoever purpose, will be denied. The motion to strike the petition will be overruled. You may go to trial now, gentlemen.

Bring in the jury.

By Mr. Struett: If your Honor please, might I make some motions now outside the presence of the jury so we can determine the things necessary before we go? If we could do that today without starting the jury, I would appreciate it.

By the Court: Go ahead and make your motion.

By Mr. Struett: If your Honor please, I assume, and I just want to protect my record, that I think if we do it first it may save us a lot of trouble; but I would like to make a motion that as to my motion for a continuance

50 pending executive clemency, my application for executive clemency, its denial, that all my further acts

as I set forth in my petition are reserving to me that motion, and nothing is to be construed as a waiver thereof. I ask that specifically.

By the Court: You have such rights as the law gives you, and you have all of them, and they will all be accorded to you.

If you don't have them, you don't have them, and if you have them, you have them.

By Mr. Struett: If your Honor please, I have given consideration to discovery, and I would like to ask that the Government make available to me every bit of evidence that they had or concede that they had no evidence against these other people until—

By the Court: I am not going to spend any time with that.

By Mr. Struett: It is material on the question of intent, your Honor. I have given them all my evidence months ago.

By the Court: When the case is ready for trial, it is ready for trial. Bring in the jury.

By Mr. Struett: I lost a friend of mine this morning. I would like to go.

51 By the Court: Bring in the jury.

* * * * *

232 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—55-Cr.-679) • •

Monday, February 4, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This cause this day being called for trial as to the defendant Joseph T. Marzec comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and it is

Ordered that leave be and is hereby given to the Government to file, instanter, its answer to motions of the defendant to vacate the order entered herein on January 23, 1957 and for a continuance and other relief and the Court having heard the arguments of counsel and being fully advised it is

Further Ordered that said motions of the defendant be and the same are hereby denied and it is

Further Ordered that the motion of the Government to strike the defendant's brief in support of his motions to vacate the order entered January 23, 1957 and for continuance and other relief be and the same is hereby overruled and denied and the defendant having heretofore interposed a plea of not guilty to the Indictment filed herein against him for his defense puts himself upon the country and it is

Further Ordered that a Jury come and during the voir dire examination of the Jurors the hour of adjournment having arrived it is

Further Ordered that this cause be and the same is hereby adjourned to February 5, 1957 at 10 A. M. for further trial.

233 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

Monday, February 4, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued for disposition as to the defendant Bruno L. Sobieraj until the close of the trials as to the defendants Joseph T. Marzec and Stanley T. Kusper.

234 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.—679) * *

Monday, February 4, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued for disposition as to the defendant Frank A. Brandt until the close of the trials as to the defendants Joseph T. Marzec and Stanley T. Kusper.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 11979

United States of America, *Plaintiff-Appellee,* *vs.* Joseph T. Marzec, *Defendant-Appellant.*	Appeal from the United States District Court For the Northern District of Illinois, Eastern Division. — Honorable John P. Barnes, Judge Presiding.

CONDENSED STATEMENT OF EVIDENCE IN NARRATIVE FORM.

1-6 Proceedings before the Honorable John P. Barnes, one of the Judges of the United States District Court for the Northern District of Illinois, in the above-entitled cause, beginning Monday, February 4, 1957:

(Proceedings of February 5, 1957.)

SOPHIE KUBON, being first duly sworn, testified on behalf of the government:

7-16 *Direct Examination.*

The witness, an employee of the Director of Internal Revenue, identified government's exhibits 1, 2 and 3 as being individual income tax returns for the years 1949 and 1950, signed by Joseph T. and Florence Marzec. Exhibits 1 and 2 were returns for the years 1949 and 1950 respectively, filed March 15 of 1950 and 1951. Exhibit 3 was an

amended return for the year 1950, filed June 29, 1951 and showing additional income of $39,820. In the space for the signature of the person other than the taxpayer preparing the return on Exhibit 3 was typed in "A. J. Wilson, CPA."

JOSEPH PRANICA, being first duly sworn, testified on behalf of the government:

Direct Examination.

25 The witness was the treasurer of the Polish Roman Catholic Union. He identified government's group Exhibit A as being all appraisals, correspondence, and loan applications submitted to the Polish Roman Catholic Union during 1949 and 1950. Government's group Exhibit B consisted of the insurance policies and matters of record concerning the same loans. The Polish Roman Catholic Union is a fraternal organization doing business in twenty-seven states with a membership of about one hundred seventy-five thousand people. They have total assets of about Thirty-eight million dollars and were set up on a large system. They attempt to keep their investments up to forty per cent of their total assets and mortgage loans. The witness was a director of the organization from 1950 to 1954, and during that time, the defendant was employed by the organization. Government's group Exhibits A and B constituted all records relating to mortgage loans that were available in the organization for the years 1950 and 1951.

26–33 Stipulation that Joseph Thomas Marzec was a licensed real estate broker in the State of Illinois from May 26, 1945 continuously through the years 1949 and 1950.

34–57 Stipulation that government's Exhibit 6 is a true

and correct copy of a check dated March 16, 1949, payable to the order of Thomas G. Scott in the amount of Two thousand five hundred fifty dollars, was delivered to Mr. Scott on or about the date it bears; that government's Exhibits 7 through 13 are true and correct copies of cashier's checks issued by the City National Bank and Trust Company on or about the date appearing on each of them; that govenment's Exhibit 14 is a true and correct copy of a cashier's check dated March 18, 1949 and payable to Robert N. Erskine, in the amount of Two thousand six hundred dollars; that government's Exhibits 15, 16 and 17 are true and correct copies of cashier's checks issued by the American National Bank and Trust Company on or about the date each of them bears; that government's Exhibit 18 is an escrow file of the Chicago Title & Trust Company, Escrow 173999, opened on or about July 9, 1950; that government's Exhibit 18-A is a check payable to Joseph Marzec in the amount of One thousand two hundred fifty dollars pursuant to instructions under Escrow 17999; that government's Exhibit 19 is the original jacket and complete file of the Chicago Title & Trust Company as to a certain escrow agreement entered into about August 2, 1950; that government's Exhibit 19-A is a check of the Chicago Title & Trust Company payable to Joseph Marzec in the amount of Two thousand six hundred dollars pursuant to arrangements under the escrow covered by government's Exhibit 19; that government's Exhibit 20 is a transcript of a ledger sheet of a checking commercial account of Joseph T. Marzec with identifying numbers of the Pioneer Trust & Savings Bank, during the year 1949; that government's Exhibit 20-A is a copy of a deposit slip of the Pioneer Trust & Savings Bank relating to deposits appearing on government's Exhibit 20; that Mr. Evans, an escrow officer of the Chicago Title & Trust Company, would testify that with respect to government's Exhibit 19 there was an escrow

agreement between the Chicago Title & Trust Company with Sidney Pyster and Sol J. Schnitz, covering the sale of a piece of property located at 7202-8 South Michigan Avenue for a purchase price of Seventy-two thousand five hundred dollars, accompanied by a money lender's escrow agreement in which the Polish Roman Catholic Union agreed to make a sixty-five thousand dollar first mortgage and deposit the net proceeds of such mortgage in the sum of Sixty-three thousand eight hundred forty-one dollars in the escrow and that the Chicago Title & Trust Company was directed to pay the sum of Two thousand six hundred dollars to Joseph Marzec for services rendered; that the check previously marked government's Exhibit 19-A for identification was issued by the Chicago Title & Trust Company pursuant to that direction.

57–83 THOMAS G. SCOTT, being first duly sworn, testified on behalf of the government:

Direct Examination.

The witness was a real estate dealer in his own behalf and was engaged in such occupation during the years 1949 and 1950. He had occasion during those years to have dealings with Mr. Joseph Marzec of the Polish Roman Catholic Union. The Polish Roman Catholic Union made regular mortgages for him. These were first mortgages in connection with the sale of real estate by Mr. Scott. Mr. Scott arranged with Mr. Marzec about the mortgage. Government's Exhibit 21 is a book in which he kept a record of each building he bought in. He recorded his receipts in connection with those buildings on one side and disbursements on the other side. The records were made on or about the date of the various entries in the regular course of business. Government's Exhibit 22 for identification is

the record for the year 1950. 1949 is covered by Government's Exhibit 21.

The page of government's Exhibit 21 bearing the heading "7252 South Park Avenue" pertains to a building he acquired during the year 1949 and in connection with which he obtained a mortgage from the Polish Roman Catholic Union on about January 31. He talked to Mr. Marzec in connection with that mortgage about a week before in the office of the P. R. C. U. He asked Marzec for the amount he wanted and Marzec said that he could get it and if he was not about to get that much Mr. Marzec would tell him what he could get. He does not remember the particular amount on this piece of property. It was a five pe. cent mortgage for ten years. In connection with this loan he gave a commission of Four hundred dollars to Mr. Marzec. Sometimes the commission was determined on the basis of the mortgage and sometimes it wasn't. If he asked Mr. Marzec for a loan on which Mr. Marzec already had the application in, he would have to pay a little more for it.

He made a down payment on 6617 and 6619 South Perry on May 8, 1950. He went to see Marzec about that loan and Marzec told him that he already had an application in and would have to pay the other fellow something. He paid the loan commission of Seven Hundred dollars and he also paid Mr. Marzec Two hundred dollars on May 19 in connection with that property. These payments were made in cash.

The first loan he made, he had a conversation with Mr. Marzec. The broker had told him that the P. R. had a loan on the building which was about paid off. The broker suggested he could get them to make a new loan on it. He called them up and they told him to come out and see them. When he had the conversation with Mr. Marzec, he told him what he wanted was a loan. Marzec gave it to him and Marzec wanted a commission. He paid it to Marzec. Marzec

discussed the amount and manner of payment. Marzec said it had to be in cash. Mr. Marzec told him that the commission was to be three per cent of the loan. He paid Mr. Marzec a commission in connection with each loan procured for me from the P. R. C. U. in the year 1949 in cash. The same is true of the loans in 1950. They were usually three per cent of the mortgage price, although there may have been a little extra expense sometime. The commissions paid were recorded in government's Exhibits 21 and 22 for identification. He paid Mr. Marzec five hundred forty dollars in connection with the building at 6800 South Wabash Avenue. He paid Mr. Marzec Four hundred eighty dollars in connection with the building at 6321 South Carpenter, and Eight hundred and sixty dollars in connection with the building at 5675 Normal Avenue. He does not know if these were all three per cent of the principal amount of the mortgage. He paid five hundred twenty-five dollars in connection with the building at 7029 Prairie Avenue; those are the commissions paid to Mr. Marzec as best as he can recall during the year 1949.

Government's Exhibit 6 is a check to his order which he received in the amount of Two thousand five hundred fifty dollars. He cashed the check and paid the proceeds to Mr. Marzec in connection with the building at 4711-15 South Greenwood Avenue. He acquired a mortgage loan on the property located at 5740 Maryland Avenue during the year 1950 and paid a commission to Marzec of Four hundred dollars in cash. He paid a commission of Four Hundred twenty-five dollars in the year 1950 in connection with the property at 5612 Maryland Avenue.

During the year 1950, he had an occasion to make arrangements for a mortgage loan on the property located at 205 East Marquette Road. He had a conversation with Mr. Marzec in the P. R. C. U. office during the year 1950 in connection with that loan. He asked Mr. Marzec for the

loan and it was arranged. He made that loan for Mr. Perry who had offered him Six hundred dollars to arrange it for him. He agreed that the commission would be paid. He does not have any records of that loan except for the Six hundred dollars Mr. Perry paid me. He worked for a real estate firm, Slaughter & Company. Mr. Slaughter drove him and he made arrangements for the loan. He did not introduce Mr. Slaughter to Mr. Marzec. That commission was to be paid on a percentage of three per cent. He had no occasion to pay commissions to anyone at the P. R. C. U. other than Mr. Marzec and never discussed commissions with anyone there other than Mr. Marzec. These constitute all of the transactions he had with the P. R. C. U. or Mr. Marzec during the years 1949 and 1950.

Cross-Examination.

He first started dealing with the Union in about 1946 or 1947 and dealt with Mr. Marzec from the very inception. He knew that Mr. Brandt was the treasurer because he signed the commitments. He knew that they had to have an appraisal and knew the name of the appraiser. He knew the legal details had to be passed on by the legal department. He knew the head of the legal department was Kusper. He knew that Mr. Marzec would always have to go into Mr. Brandt's office to get the commitment, and saw him go into Mr. Brandt's office after he received the cash commission. He does not know of his own knowledge whether Marzec kept that money or distributed it to others.

CYRIL I. MILTON, being first duly sworn, testified on behalf of the government:

89–104 *Direct Examination.*

He is a real estate broker investor. He first met Mr. Marzec around 1949. He saw Marzec in connection with a mortgage on 6101 South Drexel in which he was interested as a broker. He asked Marzec for a loan of around Sixty-five thousand dollars. They agreed as to the terms of the loan. At that time they were paying four per cent commission and he was to receive one per cent as a finder's fee from the P. R. C. U. This finder's fee was ultimately paid by check drawn on the R. C. U. At the time of his first conversation with Mr. Marzec, Marzec told him that the commission would have to be put in escrow. He had a conversation with Mr. Marzec concerning the payment of the commission. Marzec asked him at that time to make some arrangement about this four per cent. He told Marzec that he was dealing with strangers for the first time and the thing to do would be to then place the money in escrow. Marzec finally agreed that they should place a certified check in escrow with Mr. Kusper. He has not talked much to Mr. Kusper at all. He does not know exactly how the check was handed over, but Mr. Kusper receipted for it. He does not remember whether Mr. Marzec originally requested the commission be paid directly to him, but he knows that all the money was to be paid directly to Marzec. The commission on this sale was Two thousand seven hundred dollars.

He obtained a mortgage from the P. R. C. U. for property located at the corner of Trumbull and Franklin Boulevard, and paid a commission to Mr. Marzec. Mr. Marzec told him that he should give Marzec One thousand six hundred dollars as soon as he got this mortgage. He suggested that he

give Marzec a check, and Marzec said it would have to be a cashier's check. He gave Marzec a cashier's check outside of his office, in the lobby of the P. R. C. U. Government Exhibit 15 is the copy of the check which he delivered to Mr. Marzec.

He negotiated a few loans during the year 1950 with Mr. Marzec. He was the broker for a loan of Forty-five thousand dollars on the property located at 4456 Washington Boulevard. He does not believe he gave him (Marzec) the commission personally on that property. Government Exhibit 16, copy of the cashier's check on the American National Bank to his order in the amount of One thousand eight hundred dollars refreshes his recollection. The money was in escrow with the Chicago Title & Trust Company. The purchasers of the building gave him that money and he bought this cashier's check with it. His signature is on government's Exhibit 16. He doesn't remember where he gave it to Mr. Marzec but it was purchased for the purpose of paying him a commission.

He negotiated a mortgage loan in August of 1950 for property at 2500 North Kedzie Boulevard. Government's Exhibit 17, cashier's check drawn on the American National Bank to his order in the amount of One thousand nine hundred dollars is the check he gave Mr. Marzec as commission on this transaction.

He never did business in negotiation of real estate mortgage loans with the P. R. C. U. with anyone other than Mr. Marzec. He does not know why he used cashier's checks payable to his own order rather than checks paid to the order of the P. R. C. U. Mr. Marzec instructed him to make his payments in this fashion.

104–111 *Cross-Examination.*

Robert N. Erskine, the payee of government Exhibit 14, was the attorney representing the purchasers of 6101 Drexel. Marzec first said that he wanted it in cash. He said

he couldn't put up the commission in cash. Marzec then said he would find out and later suggested he put the money up. He was in Mr. Kusper's office when the money was put up. He had no dealing with any of the other officers of the P. R. C. U. He knows who they were. The treasurer was Frank Brandt. He was the fellow who would send him a letter accepting the loans. He only knows what Mr. Marzec told him as to what he did with the cash or cashier's checks. He told me he split it four ways. Investigating agents from the Bureau of Internal Revenue asked him to produce the checks he paid Marzec with and he produced the checks that he bought. He did not have the District National Bank cashier's check. He told them about the first deal to the best of his recollection. He think he shows him certain papers or whether with reference to that deal. He does not remember them asking him about whether anyone else shared in the commissions he paid Marzec. He gave the Bureau of Internal Revenue a letter in that connection. He was asked some questions by a couple of men. They originally came back to get some of the evidence you have here that money was paid to Mr. Marzec. He does not recall whether Kusper's name came up in that connection.

111–112 *Redirect Examination.*

Defendant's Exhibits 1 to 6 were delivered to Mr. Reeb of the United States Attorney's Office in March of 1955. Nobody had seen these documents before then.

112 *Recross Examination.*

No one from the Internal Revenue ever asked him for such documents.

WILLIAM J. HOPPE, being first duly sworn, testified on behalf of the government:

113-127 *Direct Examination.*

He is engaged in a mortgage brokerage and insurance business. He negotiates first mortgage real estate loans for his clients and was engaged in such business during 1949 and 1950. He has negotiated real estate mortgage loans with the P. R. C. U. and Joseph Marzec. He first met Mr. Marzec in 1948, either at the office of the P. R. C. U. or at his office. He believes the substance of this conversation was that they had submitted one or two loans to Mr. Brandt, the treasurer of the P. R. C. U., and that Mr. Marzec was the representative through whom their loans would be negotiated. Following that conversation, they sent applications to the P. R. C. U. direct and a copy to Mr. Marzec. They paid commission to Mr. Marzec in connection with these loans.

"Q. Did you discuss commissions with Mr. Marzec when he visited you at your office?

A. In general.

Q. What did he say and what did you say about commissions, as best you can remember at this time?

A. Well, there was a certain stipulated amount of commission that was to go to—was to go on the application; not to go on the application, but was to be collected, and I also had the impression that Mr. Marzec's position in the matter was one in which officers or directors had concurred.

Q. Now, you say that was your impression?

A. That was my impression.

Q. From what source did you derive that impression, Mr. Hoppe?

A. Well, I would derive it largely from Marzec. Mr.

Marzec himself, but in the way of—no other person in the P. R. C. U. told me otherwise.

Q. Did anyone else in the P. R. C. U. at any time ever ask you for commissions?

A. No. Mr. Marzec was—I was told he was delegated by—to do the negotiation, and somehow or other I had the impression that the treasurer had approved that method of handling the negotiations."

Mr. Marzec stated the commissions would be approximately five per cent of the amount of the loan and that Mr. Marzec was to receive a share of that commission. In most cases four per cent was paid to Mr. Marzec by him. Following this conversation, several mortgages were approved by the P. R. C. U. and he is certain commissions were paid on each and every mortgage made by him in 1949 and 1950. They had several applications that were rejected. He did not offer to pay a commission on the loans which were rejected. He understood what the situation was and when he submitted the loan it was with the understanding that the commission would be paid to Mr. Marzec. There may have been cases where he tried to renegotiate the commission during 1949 and 1950, but generally speaking the pattern was four per cent to Mr. Marzec. He requested the commissions be paid in a cashier's check which he secured from the City National Bank. These checks were payable to Joseph Marzec. He does not think he obtained cashier's checks from the City National Bank payable to Joseph Marzec for other than real estate commissions. Government's Exhibits 7 through 13 are photostatic copies of checks delivered to Joseph Marzec by him in payment of real estate commissions during the year 1949. Government's Exhibit 11 is a photostatic copy of a cashier's check on the City National Bank and Trust Company payable to Joseph T. Marzec in the amount of Six Hundred dollars which he delivered to him

in the year 1950 in payment of a real estate commission. He has forgotten his home address, but mostly he mailed his original check to 4182 West Barry Avenue.

127-131 *Cross-Examination.*

Two or three years prior to 1948, they made no loans at the P. R. C. U. Part of that time he made loans with the former treasurer, Kozubal. He turned whatever correspondence he had over to the government at the United States Attorney's Office. When the agents came out, they wanted to see his files. He gave them the files, and he believes they read the correspondence. He understood that after the change Mr. Brandt was the treasurer. They would make an appraisal of the property by an independent appraiser. I knew in an indirect way that Mr. Sobieraj was the appraiser and that Mr. Kusper was the attorney.

ROBERT N. ERSKINE, being first duly sworn, testified on behalf of the government:

132-143 *Direct Examination.*

The witness testified that he was an attorney at law, and represented the purchasers of 6101 South Drexel Boulevard for which the mortgage negotiations were handled by the witness Milton. Government's Exhibit 14 for identification was a check on District National Bank payable to the witness' order in the amount of Two thousand six hundred dollars, endorsed by the witness, and deposited to an escrow in the Chicago Title & Trust Company. Government's Exhibit 23 is the forwarding letter for government's Exhibit 14. The witness did not recall what disposition he had made of government's Exhibit 14. He stated that government's Exhibit 23 was dictated by him and signed by both he and Kusper. Then it was put into escrow.

143 *Cross-Examination.*

Bureau of Internal Revenue agents did not come to see him about this case a long time ago.

143–146 (Government's Exhibit 23 read to the jury and government's Exhibit 14 described to the jury.)

Government's Exhibit 23 is as follows:

"Government's Exhibit No. 23 is a letter dated June 3, 1949, addressed to Mr. S. T. Kusper, attorney at law, Chicago, Illinois.

" 'Dear Sir:

" 'An application to the Polish Roman Catholic Union of America for a loan of $65,000.00 on property known as 6106-6112 Drexel Boulevard, Chicago, is this day being made by me as attorney and agent for certain parties but not individually and without personal obligation trust deed and note to be signed only by trustee taking title to property. As an evidence of good faith, and to cover any expenses relating to such loan, if consummated, I deliver to you herewith as in escrow cashier's check of the District National Bank of Chicago C-77120 for the sum of $2,600.00, payable to my order and endorsed by me to you.

" 'We are making an offer to purchase said property and must have a forty-five day irrevocable commitment for such loan, to be used as a part of the purchase price. If such commitment is given, you may hold such money until it is consummated or terminated. If the loan is consummated, we release all claim to said deposit. If, for any reason, the commitment is terminated by us, and we reserve the right to terminate at any time, then you will return to me upon demand the said cashier's check, provided I pay to you in currency $75.00 to cover preliminary expenses.

"'You will evidence your acceptance of the foregoing escrow deposit under the terms hereof by endorsing the copy of this letter.

Very truly yours,

Signed: Robert N. Erskine, 111 West Monroe Street
Accepted in script, Stanley T. Kusper.'"

146 Government's exhibit 14 is a cashier's check of the District National Bank payable to Robert N. Erskine in the amount of Two thousand six hundred dollars, Check No. C-77120, which corresponds with the check number appearing in Mr. Erskine's letter and on the reverse appears the script endorsements "Pay to the order of S. T. Kusper, Robert N. Erskine," and below that, "S. T. Kusper," and below that "Joseph T. Marzec".

MAX E. MILLER, being first duly sworn, testified on behalf of the government:

146-154 *Direct Examination.*

The witness was engaged in mortgage banking and construction work under the name of Max Miller & Son. He acted as a broker for procuring mortgages from insurance companies, Federal Savings & Loan Associations, the Polish Roman Catholic Union and different similar organizations. He had done business with the P. R. C. U. prior to 1949 for the purpose of obtaining mortgage loans. His negotiations since 1947 were primarily with Joseph Marzec. The original application was sent by mail to the treasurer's office, and a copy was sent to Mr. Marzec. He never paid any commission or brokerage to the Polish Roman Catholic Union to obtain a mortgage. He paid commission to obtain mortgages from the P. R. C. U. to Joe Marzec. He first began paying these commissions in about the middle of 1947. In every loan company that

he made loans in, he usually paid commissions. In certain cases they are paid to an individual, and in certain cases they are paid to the broker or to the house. Mr. Marzec was not a loan company; he was a broker who consummated the deals. The witness understood that Mr. Marzec was representing him the P. R. C. U. and he knew that Mr. Marzec was licensed as a real estate broker. The commissions were paid to him as such real estate broker. He began making payments to Mr. Marzec in 1947 and the payments continued through the years 1949 and 1950. He paid commissions in connection with each real estate mortgage loan he negotiated during the year 1949, and also submitted applications during that year to the P. R. C. U. which were rejected. The commissions were not involved on the rejected loans. Mr. Marzec was to deliver a check to the escrow department of the Chicago Title & Trust when the title was clear. When the check was deposited, the witness was to pay a commission of four per cent to Mr. Marzec. On some loans they had to negotiate, and Marzec only got three per cent on it. On some loans, the witness paid five per cent. The percentage of commission was open for negotiation, depending upon the loan. The variation depended upon the location and the age of the building. The more desirable property would require a lower commission. The main factor was location.

154 (Colloquy between court and counsel ensued at this point, which is set out verbatim.)

"By Mr. Struett: If your Honor please, this is a rather important matter, and there is a tremendous volume of stuff. I think if we could adjourn, we could straighten it out and save considerable time, because this matter is very important to our side of the case as well as the Government's, and I want to shorten it as much as possible.

"If it is convenient for the Court, I would like to adjourn. Maybe we can agree on some of this stuff in the meantime.

155 "By Mr. Manion: The problem is essentially this: Mr. Miller has several transactions to testify to involving a great number of checks. Mr. Struett has now indicated to me that he might agree to submit one of the summaries in lieu of submitting the checks, which would expedite the testimony.

"By the Court: Very well; I will be glad if you can shorten it. We will recess at this time until 10:00 o'clock tomorrow morning.

"By Mr. Struett: May I say a word to your Honor? I just hate to do this, but I have been going a little heavy for me, and I don't feel too good. I don't want to burden you with my personal things. I have done the best I can.

"If I can have a little more recess at lunch—I will do the best I can, Judge. I just am not what I used to be.

"By the Court: Neither am I.

156 "By Mr. Struett: I have a heart condition, and I have an ulcer and I had to get milk for my ulcer. I want to go along with you, but I can't just quite take the pressure I used to.

"By the Court: We have to get along.

"By Mr. Struett: I have not delayed you much, have I?

"By the Court: No.

"By Mr. Struett: I won't.

"By the Court: The ladies and gentlemen in the jury box, they have more important business to attend to elsewhere. We have to get through with them.

"By Mr. Struett: If it could be 10:30, it would be helpful to me.

"By the Court: No—10:00 to 12:30 and 2:00 to 4:30. I have always done that except when I ran from 10:00 to 1:00 and from 2:00 to 5:00, as you know very well.

"By Mr. Struett: I will do the best I can, Judge."

157 (Proceedings of February 6, 1957. Testimony of Max E. Miller, resumed.)

159–173 Government's Exhibits 24-A through 24-R are checks issued by the witness to pay brokerage commission to Mr. Marzec during the calendar year 1949. Marzec used to come to he witness' office every Saturday for the checks. Government's Exhibit 25-A through 25-Z are checks paid for the same purpose and in the same manner in the year 1949. Some of the checks were payable to Joseph Marzec and others to cash; Marsec never stated the reason why he wanted them in cash.

Government's Exhibit 26 was a check stub for One thousand dollars. When Marzec came over, he wouldn't accept the check. Miller issued a check to his son for One thousand dollars. The son cashed the check, and Miller brought the proceeds to Marzec for a mortgage on Greenwood Avenue. There was another check issued to Marzec in connection with that loan, the stub entry for Check No. 1185 in the amount of One hundred seventy dollars fifty cents as commission to Mr. Marzec on the same property.

The witness had occasion to obtain a first real estate mortgage loan from the P. R. C. U. in July, 1950 on property at 4414-16 Malden Avenue. This deal was closed with Mr. Sam Server through the Chicago Title & Trust Company. A commission was paid to Mr. Marzec in connection with that property. The witness did not recall how the commission was paid.

During the year 1950, the witness arranged for a first mortgage loan from the P. R. C. U. on the property located at 7200-08 South Michigan Avenue. The witness made arrangements with the Chicago Title & Trust Company to pay the commission direct to Mr. Marzec.

In addition, the witness and Marzec had acquired property toegther during the period 1949-1950, title being held in the Cosmopolitan National Bank as trustee. The wit-

ness made the arrangements for the mortgages on these properties, and had an interest in property acquired by a group of attorneys which was mortgaged with the P.R.C.U. The commissions in 1948, 1949 and 1950 were never less than four points. There was an exceptional loan for Kahn and Levinkind, which was a three point. The commission did not vary as to whether or not Mr. Marzec was participating in the equity of the property purchased. It did not vary if the witness was purchasing it for his own interest. The commissions were paid to Mr. Marzec during 1949 and 1950. The witness made no payments to anyone else.

(Whereupon the following colloquy ensued.)

173 "By Mr. Struett: May we have a recess, your Honor, for fifteen minutes? We will try to straighten this out.

"By the Court: How long will it take you?

"By Mr. Struett: There are about thirty checks that he wants to check with his list.

174 "By the Court: Well, tell me how long.

"By Mr. Struett: I will say twenty minutes and we will have them ready.

"By the Court: See if you can't make it fifteen minutes. We want to get along as fast as we can.

"Take a short recess, ladies and gentlemen."

175-207 *Cross Examination.*

The witness testified that the check for One thousand dollars shown in government's Exhibit 26 was where the witness had brought the check to the Polish Roman Catholic Union on the acquisition of the mortgage from the Continental Bank on Greenwood Avenue. Mr. Marzec came out and said the boss will not take it. He said that the witness would have to go to work and get some cash. The

witness sent his boy to the Belmont National Bank and he cashed his own check. He brought the witness One thousand dollars in one hundred dollar bills in a Belmont National Bank envelope, which the witness gave to Mr. Brandt. The witness did not see Marzec hand it to Mr. Brandt, but Marzec went into the other office. The original check was destroyed when Marzec wouldn't accept it. He told the investigating agents about this. Government's Exhibt 24-A was a check payable to Mr. Marzec for One thousand two hundred fifty dollars on 3451 Grenshaw Avenue. The witness did not hold this property in trust. It was held to Joe Marzec, one-third. Defendant's exhibit 7 for identification purports to be a trust agreement covering this property. It was dated November 2, 1948. Government's Exhibit 24-A was the commission paid on that property and title was in the Land Trust in the names of Joseph Marzec, Dorothy E. Stevens and Max E. Miller. The witness did not know Dorothy E. Stevens. He was told that she was the daughter of Mr. Brandt. The witness paid her a part of the distribution on that, One thousand five hundred forty-three dollars thirty-six cents. In addition to business dealings with Marzec, the witness had business dealings with Stanley Kusper. The deal was to be on a fifty-fifty basis, Joe Marzec and himself, but when they O.K.'d the loan the witness could not get the deal unless Mr. Kusper received one-quarter interest. He put his money in just the same as Marzec and the witness, but he refused to issue the commission. He said Mr. Marzec—he would get one-quarter. That was in 1948.

The witness said his feelings were primarily with Mr. Marzec with reference to loans. He never discussed loans with anyone else, but when he was at the United States Attorney's Office with Mr. Rieger, Mr. Struett and Mr. Tobin, he said that he told the agents at the beginning of the investigation that Marzec was only a collector. The wit-

ness made that clear when the agents came in the first time.

He dealt with the Union in 1941, and generally the loans had to be approved by the treasurer, backed up by an independent appraiser, and the legal details taken care of by the attorney.

Defendant's Exhibt 9 is a list of the commissions paid out to Mr. Marzec; it is similar to the one the witness gave the agents when they first came to him. About two weeks afterward the witness had a conversation with Special Agent Wolfe of the Intelligence Unit about the list which the witness had given to Wolfe or Oscheroff being out in open circulation.

(Whereupon the following proceedings occurred.)

187 "By Mr. Manion: I object to this, your Honor. I don't see how it is pertinent to the issues in this case. It is far beyond the scope of the direct examination. I hesitated to object to this entire line of cross examination, but I believe it is a little far afield and going into areas that are not pertinent to the case.

"By the Court: I don't see the materiality of this question.

"By Mr. Struett: It will tie up, the relationship here of this man, very closely, your Honor, when I am through and I assure you that or I wouldn't be asking these questions. I am saying it in all sincerity.

"By the Court: I don't see the materiality here in your question.

"By Mr. Struett: It is leading up to an overall picture here just as I represented to this jury yesterday. I am going to bring that out and develop this relationship of this man to this situation, what the true situation was. Everything here is important. It will all jell in just like in a crossword puzzle. I can assure you of that, your

Honor. I am not asking this just to be asking questions. I promise you that, and I make it in all sincerity.

"By the Court: Proceed as judiciously as possible.

By Mr. Struett:

Q. What was that conversation, to the best of your recollection?

189 "A. I talked to Mr. Wolfe about the list that I submitted to him which was being peddled around in the saloons over on LaSalle Street with a fellow by the name of Nicholas.

"Q. And what did he tell you, then?

"A. He couldn't understand it, what had happened there, but I threatened to go to the intelligence department because this was a document which was entrusted to the intelligence department confidentially and I didn't want my list to be peddled around in saloons in the Bismarck Hotel.

190 "Q. Did he afterwards call you and say that the document had been put back?

"A. Yes."

In September of 1954 the witness had a conversation with Mr. Wolfe concerning the return of certain checks (made out in the name of Repsuk) in which Mr. Wolfe told the witness that he had delivered the checks to Mr. Rieger's office.

Defendant's Exhibit 10, the client's copy of the income tax return on the property at 3449-55 West Grenshaw, the building that Mr. Brandt's daughter had one-third interest in, was prepared by Arthur Goldberg for the witness. Osheroff was an employee of Arthur Goldberg. He was the accountant that did the work in the witness' office. Osheroff was a revenue agent who worked on this case.

The witness had been interested in a building at 2729-37 West Leland Avenue. This was a twelve flat building.

(Thereupon the following proceedings took place.)

193 Q. There was a party by the name of Tyrrell Richardson who was an attorney who wanted to make a loan on that building, isn't that correct?

A. No, sir.

By Mr. Manion: Your Honor, I must again object to this line of questioning.

By the Witness:

A. No, sir.

By the Court: I don't see the relevancy here of these
194 questions you are asking and the answers you are getting.

By Mr. Struett: Judge, I will give it this way: Tyrrell Richardson was a lawyer that they got for Marzec, as I said yesterday, and I will cover it now. Then, the next thing you know, Richardson is negotiating a loan and Osheroff is making the payments on the building. If that isn't relevant in my theory of the case, I don't see what it is.

By the Court: I don't see the relevancy.

By Mr. Struett: I am trying to make it as short as possible.

By the Court: Going back to your question, you asked who this man was who prepared this income tax; he was an agent.

By Mr. Struett: And then he went to work for Mr. Miller.

By the Witness: He didn't go to work for me.

By the Court: No. He went to work for an auditor. I don't see the relevancy. I wish you would stay on the
195 lawsuit you are trying. It is important.

By Mr. Struett: I am staying on the lawsuit.

196 By Mr. Struett:

Q. Now, what do you know about that building? Make it fast.

A. That building I have acquired with George Stucker's

real estate office at 5018 North Sheridan Road and I made the mortgage myself with the P. R. C. U. I held the building for about two or three years when Osheroff worked for Goldberg. He says he had a little money he would like to buy a piece of property with and I sold the property to Osheroff.

Q. And then Mr. Osheroff made the payments?

A. Mr. Osheroff made the payments. He took over the beneficiary certificate on the trust.

Government's Exhibits 19-A and 19-C are trust deed and escrow agreement with the Chicago Title & Trust Company covering the property at 7202-08 South Michigan. There was a deposit of Two thousand six hundred dollars there to Joe Marzec. The witness set up the escrow, knew that the provision concerning the payment of the Two thousand six hundred dollars was there. He discussed it with Mr. Marzec, but not before it went in. He knew the agreement with Mr. Marzec was to pay him four points, but when he left for Mayo Brothers, Mr. Marzec wanted a check so the witness made it directly payable to him.

(Whereupon the following proceedings occurred.)

199 Q. Now, Mr. Miller, you suggested to Mr. Marzec back in 1951, I believe it was, that he employ an attorney, did you not?

A. Pardon me?

Q. You suggested to Mr. Marzec that he employ an attorney?

A. Yes, sir.

Q. And you recommended an attorney?

A. Yes, sir.

Q. And who was it?

A. It was a fellow by the name of Tyrrell Richardson.

Q. How long had you known Mr. Tyrrell Richardson?

A. Well,—

By Mr. Manion: Your Honor, I will object to it not only

because he is again going far afield in this case, but it does not come within the scope of the direct examination.

By the Court: Sustained.

By Mr. Manion: Not pertinent to the issue.

By the Court: Sustained.

By Mr. Struett:

200 Q. Now, I show you defendant's Exhibit 11 marked for identification, and ask you what that is?

A. Well, this is an affidavit that I made to Mr. Wolfe, that brought it in. I think that is the affidavit. I think I have got a copy here.

Q. You gave that to Mr. Wolfe, did you?

A. Yes, sir, of the Intelligence Department.

Q. I read you the second paragraph thereof.

By Mr. Manion: Your Honor, I would object to this procedure, if he is intending to impeach the witness on the basis of the affidavit.

By Mr. Struett: I just want to find out the witness did here.

By Mr. Manion: If he wants to offer this in evidence, I believe he should reserve it for his case.

By the Court: Yes, if you want to offer it in evidence. If you want to impeach him, it is another thing.

By Mr. Struett: He said he dealt exclusively with Mr. Marzec and he said—

201 By the Court: He said he made his loan through Marzec.

By Mr. Struett: Well, all right.

The witness testified that he had never spoken to Brandt during all of his administration. The only one he ever discussed loans with was Mr. Marzec. He had known Special Agent Wolfe from the time he came in to make the investigation. This was the first time that he had ever met Wolfe. The first time he had met Revenue Agent Osheroff was when he came in with Mr. Wolfe.

(Whereupon the following proceedings took place.)

204 By Mr. Struett: I would like about a ten minute recess to talk to my client to see if there are any other questions.

By the Witness: I came down sick.

By the Court: You have had about thirty minutes already.

By Mr. Struett: I understand that.

By the Court: Take him into the jury room if you want to talk to him and come back.

The witness then testified that he never in his life made out a check to Blanche Wiersbicki (Kusper's wife's maiden name) except a Fifty dollar check for the poor.

207-211 *Redirect Examination.*

The witness had spoken to Mr. Brandt and Mr. Kusper but had never discussed any business with them. In all the years he made loans, he had never discussed anything with the officers in relation to them. Even applications were not discussed with the officers but were sent through the United States Mail with a copy to Mr. Marzec. Government's Exhibit 29 is the type of application which the witness submitted.

The sale to Osheroff, took place in 1953. At that time Osheroff had been out of the United States Revenue Service for two or three years. The witness gave him the commission because there was no one involved. At the time the witness prepared government's Exhibit 29, Osheroff was employed by Arthur Goldberg. The witness had never seen Mr. Osheroff until he came in to examine the books. During the time he was working on this case, Osheroff did no work for the witness. The work he did for the witness came after he left the Revenue Service.

Government's Exhibit 26 is a check stub record of Mr.

Max Miller, entry 1168, May 29, 1950, relates to a check drawn to the order of Joseph R. Miller, exchange for our checks remortgage P. R. C. U., amount this check One Thousand dollars.

Entry 1185 is dated June 11, 1950, to the order of cash, re 4361 Grenshaw to Marzec, One hundred seventy dollars and fifty cents.

J. CUTLER SHELDON, being first duly sworn, testified on behalf of the Government:

212-217 *Direct Examination.*

The witness, a lawyer, testified that he had occasion to negotiate mortgage loans with the P. R. C. U. in March or April of 1949 on property at 3656 Polk Street. He dealt with Mr. Marzec. He first met Marzec in the latter part of 1949 or early part of 1950 at the offices of the P. R. C. U. He told Mr. Marzec that he wanted to make loans from time to time and asked whether they could be made. Mr. Marzec said they could be made. The witness asked what the commission would be, and Marzec told him it would be four points, payable in cash at the time he received the commitment.

The Witness then described the making of six loans during the period involved, paying four per cent commission in cash in each instance to Mr. Marzec personally. The witness stated he had never delivered commissions to anyone other than Mr. Marzec at the P. R. C. U.

218 *Cross-Examination.*

Mr. Marzac did not tell him why he wanted this money in cash and the witness did not ask him. The witness does not recall having told anyone that he told the investigating agents that Mr. Marzec was the collector for this money.

HENRY S. BANACH, being first duly sworn, testified on behalf of the Government:

219-230 *Direct Examination.*

The witness stated that he was a mortgage banker. He did practically all of his business as a mortgage banker during the years 1949 and 1950 with the Polish Roman Catholic Union. He first submitted an application for a mortgage loan to the P. R. C. U. in 1948. His applications had generally been approved with the exception of a few during the year 1948. He submitted his applications to the treasurer, Brandt. All of his dealings were through Mr. Marzec. Marzec would let the witness know if an application had been approved and tell the witness what the commission was going to be. The commission was paid to Mr. Marzec. He paid commissions to no one else at the Polish Roman Catholic Union and had no direct dealings with Mr. Brandt, Mr. Sobieraj or Mr. Kusper with respect to commissions. In the beginning of the year 1949, the witness paid commissions by checks to the order of Mr. Marzec. Later Mr. Marzec requested that the checks be payable to cash, and later, to him in cash. He paid money in cash in the latter part of his dealings. That was the only way the witness could do business with him. The witness obtained the cash by issuing a check for the amount he requested. The witness took it to his bank, cashed it, put the money in an envelope and handed it to Mr. Marzec. After the check came through, the witness made entries on the stubs and a memorandum as to whom the money went and for what purposes. The entries were made by the auditor, who happens to be his wife. Government's Exhibits 27-A through 27-OOO are a group of checks made out in Mrs. Banach's handwriting. The notations on the reverse side of the checks were made when the checks

cleared through the bank and were received by him. This was done at the request of his auditor, Samuelson. Government's Exhibit 28 is a group of check stubs from a regular three page commercial check book kept by the witness. Entries were made by the witness' wife, employed as his auditor, and the records kept for income tax purposes. The sheet of stationery attached to government's Exhibit 27-GG is a file copy of a letter with regard to the check to which it is attached. Government's Exhibit 20-A is a triplicate of the deposit check; he deposited government's Exhibit 27-GG in the bank account of Mr. Marzec at the Pioneer Trust & Savings Bank.

With respect to government's Exhibit 27-AAA, that money was paid to Mr. Marzec for a loan on 1522 South Springfield and 3850-54 West 13th Street. The loan was for Twenty-five thousand, but the Union accepted only Twenty-two thousand five hundred, and Marzec returned One Hundred dollars in cash to us. No part of the proceeds of any other checks were ever refunded by Mr. Marzec.

The witness usually paid Mr. Marzec before the mortgage proceeds had been paid out of the P. R. C. U. Usually as soon as the applications had been approved but before the mortgage papers were drawn. Some of the witness' applications were rejected. The witness testified that he did not have to pay Mr. Marzec when a mortgage application was rejected because payment was made when Marzec told the witness the mortgage had been approved. The witness did not always receive a written commitment in connection with these mortgages, but when he received them, they were signed by Mr. Brandt and mailed to the witness or delivered to him by Mr. Marzec.

236-240 (Thereupon the following proceedings occurred.)

By Mr. Manion: We have no further questions of this witness, your Honor. We will, however, at this

time, offer in evidence Government's Exhibits 20 and 20-A which are the ledger card and the deposit slip relating to the commercial account of Joseph T. Marnee at the Pioneer Trust & Savings Bank which were identified by our stipulation yesterday, and Government's Exhibit 27-A, lettered consecutively through the alphabet, through 27-OOO for identification, both inclusive.

By Mr. Struett: Your Honor, I will have my man check them during the noon hour, if we may have until 2:30.

By the Court: Oh, no, no. Let us get along.

By Mr. Struett: It will take a half an hour to three-quarters of an hour to check those.

237 By the Court: Very well. That will give you three-quarters of an hour for lunch. We have to get along with this case.

I will give you an hour and 38 minutes. 2:00 o'clock, ladies and gentlemen. * * *

238 By Mr. Struett: If your Honor please, may I say something? I don't like to say this to you, but I want you to know we took very little time off for lunch today,

239 and we were back here in a hurry. We were back at twenty-five to, and went out a quarter after or whenever you adjourned, or 1:00 o'clock. I am doing the very best I can, or Mr. Marnee is. I haven't had a chance to talk to him yet. He is checking that against his record.

By the Court: Hurry him up.

(Thereupon there was an interruption in the proceedings.)

By the Court: Will you bring the jury in now?

By Mr. Struett: There is one check I think covering a refund where they reduced the mortgage.

By the Court: Yes, $100.00.

By Mr. Struett: There is another for $75.00 in there.

By Mr. Manion: We have completed our direct examination, your Honor.

(Thereupon the following proceedings were had in open court, in the presence and hearing of the jury:)

240 By Mr. Manion: Our offer of these exhibits is pending.

By the Court: Proceed, Mr. Struett.

Cross-Examination.

Government's Exhibit 27-A is a check for Seventy-five dollars, dated September 8, 1949. It was issued to cover an alleged shortage on a commission on a purchase of a property at the southwest corner of Blackstone and Marquette Road, back in 1949. The witness reported the payments to the government and took them as a deduction. He gave the government and Mr. Marzec a form 1099. He received a letter back to the effect that Mr. Marzec had not received this money. He gave the letter to Mr. Manion.

Under questioning by Mr. Manion, the witness testified that he gave a copy of the letter to the government yesterday. He delivered the letter to the same man to whom he gave his checks.

Defendant's Exhibits 12, 13 and 14 for identification consisted of a letter from Mr. Wilson, two copies of letters from his files together with a 1099 form. The witness referred the letter to his auditor, Mr. Samuels, who answered it for him. The copy of the answer went to Mr. Wilson.

248 Mr. Manion stated to the jury that the two entries appearing on government's Exhibit 28 are the check stub entries, No. 6524, dated May 19, 1950, made to cash, four per cent commission, Joseph T. Marzec, in the amount of twenty-two thousand dollar loan by the P. R. C. U. on 6110 South Greenwood. The check was in the amount of Eight hundred eighty dollars, and entry No. 6525, May 19, 1950, to cash, for four per cent commission to Joseph T.

Marzec, Twenty-two thousand five hundred dollar loan on 6345-47 South Greenwood Avenue. The amount of the check is Nine hundred dollars.

ARTHUR WILSON, being first duly sworn, testified on behalf of the government:

250-269 *Direct Examination.*

The witness stated he was a certified public accountant, registered in the State of Illinois. He was acquainted with the defendant and was first hired by him in the latter part of 1950 as an auditor or certified public accountant. Mr. Tyrrell Richardson first referred Mr. Wilson to Mr. Marzec. Mr. Richardson is an attorney at law, and the witness believed that Richardson represented Marzec at that time.

He first met Marzec when he received a call from Richardson and went to Mr. Marzec's house on West Barry Avenue. The witness was retained by Mr. Marzec because the latter was being investigated for income tax. The witness was informed by Mr. Marzec that his books and records represented or supported the tax return that he had filed and that he had no other income. Several days afterwards, the witness took his records and bank accounts. At that time, the witness' office only had the 1949 return. They compared the 1949 return and Marzec's books and records; the latter were substantially in agreement with the return. The witness interrogated Mr. Marzec as to whether he had received any additional income and was told that his total income was included in the return filed. Marzec told the witness that his return was substantially correct as to deductions as well as to income. Thereafter, the witness examined Marzec's books and records for the calendar year 1950 and compared them with Marzec's 1950 return. The witness did not prepare the 1950 return. Marzec's books and records with respect to commissions

received and paid during the calendar year corresponded with the original tax return.

Marzec showed the witness the 1099 form (government's Exhibit 30) in which Marzec was shown as having received commissions of Thirty-nine thousand dollars that were not included on his books. Marzec told the witness that he had not received the money and the witness wrote a letter to Mr. Banach in which the receipt of the money was denied, sending a copy of that letter to the Treasury Department's Processing Division at Kansas City, Missouri. The statements in this letter (defendant's Exhibit 12) were based on the statements of Mr. Marzec.

Later, the witness received a letter from another accountant representing Mr. Banach, stating that Mr. Banach had evidence that he paid the money to Mr. Marzec. Government's Exhibit 32 is a letter received from Mr. Samuels. The witness then called Mr. Samuels and met him at Mr. Banach's office for the purpose of seeing their records. This took place subsequent to February of 1951 and prior to September. Government's Exhibit 3, the amended individual income tax return for Mr. Joseph T. Marzec and Florence Marzec for the calendar year 1951, is an amended return, having all of the same facts as the original return but one additional source of income stated. This source was the commission of Thirty-nine thousand eight hundred twenty dollars shown on page 2, Schedule G and is the exact amount shown in the return filed by Mr. Banach. There were no additional expenses or deductions in connection with the commission business included in the preparation of government's Exhibit 3 in evidence other than those which appear in government's Exhibit 2. The witness examined Mr. Banach's records prior to preparation of government's Exhibit 3, filed on or about June 9, 1951, and Marzec denied receiving additional income from Mr. Banach up to the time of the filing of government's

Exhibit 3. The signature of Mr. Wilson's firm was omitted from this return by inadvertence because it is common practice for any return prepared in the office to have the firm name typed on that line. The witness did not recall any specific reason for not signing the return. Prior to filing, the witness interrogated Marzec about other income received by him.

The witness discontinued his representation of Mr. Marzec shortly after September of 1952. Marzec never admitted that he received the income which Banach attributed to him nor having received a bank deposit alleged to have been made by Mr. Banach to Marzec's account.

The witness was present in September 12, 1952 at an informal conference held in the office of the Penal Division of the Internal Revenue Service at Chicago, Illinois. He was representing Mr. Marzec in company with Mr. Richardson and Mr. Marzec. The witness did not recall who represented the Internal Revenue Service. There had been two different special agents working on the case. He thinks there was a Mr. DeWand and maybe Mr. Smith. The conference was requested by the witness on behalf of Mr. Marzec, and the testimony by Mr. Marzec, the witness and Mr. Richardson was volunteered at that time. The statements made by the witness at that conference were true and correct to the best of the witness' knowledge at that time. In response to a question as to what effect, if any, did that conference have on the witness' decision to continue representing Mr. Marzec in these matters, the witness stated, "Well, we were discouraged because we felt we were up against a brick wall."

269-287 *Cross-Examination.*

The witness had no work sheets on the work he did for Marzec because all he did was to compare the records Marzec kept with the items that were in Marzec's return. The witness went through Marzec's cancelled checks and his ledger.

At the time the witness wrote Government's Exhibit 30, the witness had examined the form 1099 for 1950. Marzec stated that he did not get this money at all. Defendant's Exhibit 30 was written upon the representation of Mr. Marzec. Thereafter the following occurred:

Q. You wrote this letter addressed to Mr. Henry S. Banach and it says this:

273 "Your letter addressed to our client, Mr. Henry S. Banach, was forwarded to us for attention. We would
274 like you to know Mr. Banach had discussed with us the payments during the course of the year to Mr. Joseph T. Marzec. Mr. Banach told us in the first instance that Mr. Marzec wanted cash as his commissions on the mortgages which he placed before Mr. Banach. We told Mr. Banach at that time that if Mr. Marzec wanted cash and if it was necessary for him to do business with him that he note on each check payable to cash the proceeds going to Mr. Marzec on the check stubs. We also advised him that at the end of the year he had to file an information form with the Treasury Department.

"Mr. Banach has complied with all the necessary rules and regulations. The fact that Mr. Marzec denies having business dealings with Mr. Banach can be disproven without any trouble. As a matter of fact, we too are writing to the Commissioner of Internal Revenue advising him of your letter to our client, at the
275 same time letting him know our circumstances. We are writing you this letter because the amount received by Mr. Marzec from Mr. Banach as commissions is taxable income to him."

Now, did you ever get a more straight, forthright clear letter from a firm of certified public accountants as to a true situation. Did you ever in your life?

A. I was working for Mr. Marzec.

Q. You are Mr. Marzec's accountant?

A. That is right.

Q. Could you have gotten anything plainer, truer, or anything else?

A. My client told me—

Q. Let's just take your word for it. He told you he had never received it, but you certainly had pretty strong evidence that there was some proof, didn't you?

A. Yes, sir.

Q. Now, when did you go over and talk to Mr. Banach?

A. As soon as convenient.

Q. Was it convenient in another two days or the next week?

276 A. Within the next two or three weeks, or as soon as Mr. Samuels could make the arrangement with Mr. Banach.

Q. So that was within the next two or three weeks?

A. That is right.

Q. It wasn't any longer than that?

A. I don't believe so.

Q. You were satisfied beyond any question of doubt, weren't you, as to, let us say, a scientific certainty? Let's put it that way.

A. May I refer you to the letter in which Banach's accountant states these checks were mostly drawn to cash?

Q. Yes.

A. And the only evidence that was going to be presented would be the statement of Banach versus the statement of Marzec, because there wasn't any written evidence.

277 Q. You were not too sure about it?

A. I certainly wasn't. My client was denying it.

Q. Let's get your mental reaction.

A. The only basis of defense my client has is to prove this report. All of the income I mean, and if he is stating somebody is accusing him of receiving income he is not getting, and I am trying to protect him, I want to make sure they are not going to be able to prove he did get it.

Q. Look on your amended return in his behalf, reporting all that income. You looked at that, didn't you?

A. That's right.

Q. You must have been sure in your own mind then, or you would not have prepared the return?

A. I don't know how many meetings later with Mr. Marzec this decision was arrived at. I don't know how much later that was. We have here a letter in the file which states this return was filed somewhere late in the summer of 1951.

Q. June 29th?

A. Well, I don't know the exact date, but it was
278 sometime not immediately after my visit to Banach, but sometime later, and at the time the return is amended and filed we had the benefit of advice from his attorney, and probably some persuasion put upon him or something has to be done about that item, and at that time the amended return was prepared.

Q. All right. Let's put it another way. Did he admit by June 29, 1951 that he got this twenty-nine to thirty-nine odd thousand dollars?

A. He does by signing that.

Q. I mean, did he admit it to you?

A. That's right, he had to, because it is in the return.

Q. I don't mean the return. Did he ever say, yes, I got the $29,000.00?

A. I don't think he ever said that, to tell you the truth.

Q. He didn't say that?

A. No, I don't think he did.

Q. Let's be frank with you. February 28th, to give you

a month to see Banach. Then you had some doubt in your mind whether this man got the $39,000.00?

A. In the face of the letter yes.

On April 12, 1951, the witness was at the Intelligence Unit, representing Marzec. Also present were Mr. Marzec, Mr. Osheroff, Mr. Conrad, the Internal Revenue Agents and Mr. Johnson, a Special Agent, who was interrogating.

(Thereupon counsel read the following from defendant's Exhibit 15-B).

281 Mr. Marzec was asked:

"Q. Have you any transaction with Henry Banach?

"A. Prior to February 4, 1951, I received a notice from Henry S. Banach regarding some commissions paid."

That is form 1099.

"This notice was received on form 1099. Subsequently it was returned to Banach by my representative, Arthur Wilson, with a letter stating no money was paid on any loans or commissions. I also informed through my representatives to the Commissioner of Internal Revenue I had not received the claimed commissions nor had I rendered any service on behalf of Banach for which any payments should be made."

282 That answer was made in your presence?

A. That is right.

Q. You represented this man?

A. That is what I said, sir.

Q. Then they asked Mr. Marzec if he had anything further to say, and then this:

"Mr. Wilson: Is there anything else or what do you care to say?

"The only statement I would like to make to the Banach matter, my client informed me of this 1099, and we took such steps as we thought proper to bring it to the attention of the Government."

That is your statement?

A. That's right.

Q. Now, do you think that you on behalf of this man, with the knowledge you then had, properly represented him over there?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. Do you think your statement or his statement was true?

By Mr. Manion: I object to that as calling for specu-
283 lation.

By the Court: He may answer.

By the Witness:

A. Now, to what statement do you refer?

By Mr. Struett:

Q. His statement to the Intelligence Unit on April 12, 1951, and your statement to him.

A. I think that at the time the statement was made I was justified in making it, because up to that time even though I had visited Banach's office I had not seen enough evidence nor did I make an audit of Banach's books. I was only acquainted with the case that gave rise to questioning my client. I was not at Banach's office more than half an hour, at the most. I explained what my purpose was, and they showed me a cash book in which they had written out "Joseph T. Marzec" so much money. That still didn't prove he had gotten it. They could have built up a tax fraud just as he could have, but denied it.

The only thing that came up that gave any evidence whether my client was going to be licked, they showed
284 me two checks made payable to Joseph T. Marzec and said that was his endorsement. I had no way, in other words, other than that of knowing. The mere passage of

purported cash, I mean. I had as much reason to believe Marzec as I had to believe Banach.

Q. Wouldn't it be better—I am just asking you this question as a certified public accountant continuously representing taxpayers before the tax bodies, of saying, "We have got that and we send it in" wouldn't it be the proper representation for you to have said that?

By Mr. Manion: I object to that, your Honor.

By the Witness:

A. Personally, I think—

By the Court: Sustained.

By the Witness:

A. That he got good representation.

By Mr. Struett:

Q. Let me ask you this: Did you ever ask Marzec if he got any other cash?

A. Yes.

Q. Did he ever tell you that he did?

A. No, except a transaction with Mr. Max Miller
285 was mentioned, some of which was reported in the return, and at Mr. Marzec's request we visited the office of Mr. Max Miller and attempted to trace the entries on Miller's records against the entries made on Marzec's.

The witness never asked Marzec how the business was run at the P. R. C. U. or how he happened to be getting Thirty-nine thousand dollars when he was employed at the Union. He did not ask Marzec whether the latter shared commissions with anyone. When the witness had Samuels letter and his conversations with Marzec, he could not make up his mind that there was cash involved. The witness might have discussed the question of cash being hard to trace in conference with Marzec and his attorney.

287–289 *Redirect Examination.*

In a conference with the Regional Counsel's Office, the witness testified that he had seen the two checks and duplicate deposit ticket for the sum of One thousand nine hundred fifty dollars deposited to Marzec's account. That admission was, technically, for the purpose of the conference. Marzec had not admitted the receipt of that money at that time.

289 *Recross Examination.*

The witness was not certain that this was a final conversation with the Internal Revenue Service to determine whether or not Mr. Marzec's case should be sent to justice with a prosecution recommendation. Shortly after the conference they received a notice that the case had been forwarded to the Justice Department. He does not have a copy of the letter in his file where he advised Mr. Marzec that the notification (defendant's Exhibits 16 and 16-A) had been r. eived.

293 *Redirect Examination.*

The witness was certain that he informed Mr. Ma ec that the file had been forwarded to the Departmen. of Justice when he received defendant's Exhibit 16. This was the usual procedure.

Recross Examination.

The witness has no record of having notified him. Mr. Richardson and he physically did nothing on Marzec's behalf in this case after the conference in Mr. King's office on September 12, 1950.

BRUNO L. SOBIERAJ, having been first duly sworn, testified on behalf of the government:

235–309 *Direct Examination.*

The witness is a real estate appraiser and broker. He was a defendant in this case and requested to testify at this time. He had entered a plea of guilty to one count of this indictment.

The witness first became acquainted with Joseph Marzec about 1947. During the year 1947 and subsequently, the witness received commissions from Mr. Marzec in connection with mortgage applications made by various real estate brokers to the Polish Roman Catholic Union for mortgages Mr. Sobieraj appraised the properties. He prepared an appraisal for each of these properties as an outside appraiser.

The witness had heard that there were commissions being passed. He asked for some of it, and through arrangements with Mr. Marzec, he received part of the commission. There was no definite agreement with regard to receiving part of these commissions. It was based, all around, anywhere from one point, one-half a point, from half to one point on a loan. As the witness received commissions from Mr. Marzec, they were reported on his daily ledger which was kept by Mrs. Stanczewski. She was a partner in the firm of W. Stanczewski & Company, the witness' company. Mrs. Stanczewski and the witness were co-partners in the firm of W. Stanczewski & Company, a real estate sales and appraising firm. This occurred during the time Mr. Brandt was treasurer. The witness made the appraisal of the property, but Marzec was getting a commission "so I thought I could get part of it myself." The witness' agreement with Marzec was that after the loan would go through, Marzec would give the witness a break on the commission of from one-half point to one point. The witness did not

get a commission on each and every loan; the standard that determined the loans upon which the witness received commissions was whether or not it was Marzec's loan. Otherwise, the witness received an appraisal fee of from fifteen to fifty dollars from the Polish Roman Catholic Union.

The payments received from Mr. Marzec were some in cash and some by check. They were all recorded in the daily cash book by Mrs. Stanczewski who was charged with keeping all of the cash records and cash receipts, including the witness' personal receipts as well as the company's. Everything was recorded in the book. Government's Exhibit 33 was identified as the witness' office book. The entires in it were made on or about the date they bear in the regular course of business. All cash receipts of W. Stanczewski, or from Mr. Marzec, or from any other source were recorded in this book. The witness did not report the cash received by him from Mr. Marzec during the years 1949 and 1950 for income tax purposes. Whenever Marzec paid in cash, he would withhold about twenty per cent, and the witness testified that he had a conversation with Marzec concerning reporting of these cash receipts for income tax purposes in which the latter said, with respect to the twenty per cent, "That is for income tax; I am paying in income tax on this." He told the witness that he was going to pay the income tax for those funds. He received no cash from Mr. Marzec during the years 1949 and 1950 which is not reported on government's Exhibit 33 for identification.

In government's Exhibit 33, there is an entry for June 17, 1950 of commissions paid of Eight hundred dollars. There is also a notation, "Income tax $160.00". That entry indicates Marzec withheld One hundred sixty dollars for the income tax he was to pay. This was pursuant to the witness' agreement with Marzec. The witness reported for income tax purposes all checks he received from Mr.

Marzec in payment of commissions and received a form 1099 for reporting. None of the cash was included in the form 1099. The witness testified that he realized that he should have reported the cash received by him for income tax purposes even though he had this agreement with Mr. Marzec. The witness relied on his agreement with Mr. Marzec in not reporting his tax. The total amount of commissions paid the witness by Mr. Marzec during the calendar years 1949 and 1950 are in the books.

The entry in the book for May 27, 1950 showing an item "Director's $105.00," was withheld for taxes. The witness did not pay that to the directors. That was withheld from the total, six twenty. Mr. Marzec never gave the witness any cash to be paid to Mr. Brandt or Mr. Kusper. All cash from Mr. Marzec delivered to the witness was for himself and for Mrs. Stanczewski.

309-322 *Cross-Examination.*

The witness signed an affidavit to the government that he received money from Marzec. There was no mention of cash. The statement in defendant's Exhibit 17 by the witness that he did not receive any commission from anyone other than that reported on his return was neither true nor false because the witness got the commission from Marzec. The witness appeared before the Grand Jury that returned this indictment and testified that he received commissions.

311–316 (At this point in the testimony ensued a colloquy between counsel and the court concerning the Grand Jury Minutes. At the conclusion of this colloquy, the following proceeding occurred.)

315–316 By the Court: Any further cross examination?

By Mr. Struett: I have got a lot, your Honor. I would like to read this over and study it and I would like

to proceed with this witness tomorrow morning. This is very important to my case. I want to take this home.

By the Court: No, you can't take it away with you.

By Mr. Struett: Just his.

316 By the Court: No.

By Mr. Struett: All right.

By the Court: It is a Grand Jury record.

By Mr. Struett: All right.

By the Court: Can you go ahead for three or four minutes?

By Mr. Struett: Oh, I can ask him a few questions.

Mrs. Stanczewski, the mother-in-law and partner of the witness, made the record. The witness signed defendant's Exhibt 17 when he was called to Mr. Wolfe's office, where there was a stenographer present, and Mr. Wolfe asked the questions. The witness stated that evidently defendant's Exhibit 17 contained the only questions that were asked because they were all that were contained in the exhibit. The witness had been asked to come down at a certain time, but did not know what questions were going to be asked him. Mr. Brandt and Mr. Kusper were not there, and the witness did not know whether they signed similar affidavits at the same time. The affidavit was not prepared for the witness' signature before he arrived. He had to wait about a half hour after they asked the questions and then the stenographer brought in the typewritten sheet which he signed. Mr. Wolfe did not dictate the affidavit. The girl came in and sat across the desk from the witness and Mr. Wolfe asked him his name and all of these other things. The girl took it down in shorthand and then, about half hour later, she came in. The witness read the document over and signed it. Mr. Wolfe was with him all the time. The girl prepared it from the questions and answers.

There was no definite arrangement for getting a loan

through the Polish Union. Marzec brought in applications for loans but could not approve them without Brandt and Kusper. If all the loans were made which were applied for, there wouldn't have been enough money. The witness stated that all the appraisals were good appraisals because there was never a foreclosure in the P.R.C.U. on one of the witness' appraisals. The witness stated it was a question of putting in a good word.

323 Proceedings of February 7, 1957.)

STEPHEN KOBYLINSKI, being first duly sworn, testified on behalf of the government:

324-29 *Direct Examination.*

The witness was the auditor and comptroller of the P. R.C.U., occupying that position during the years 1949 and 1950. He was acquainted with the defendant, Joseph T. Marzec, who was employed by the P.R.C.U. as a bookkeeper in the Auditor's Department under the witness' jurisdiction. Mr. Marzec had charge of watching the mortgage loans for delinquencies, watching tax payments, preparing the schedules for the annual statement, and performing work of similar nature with respect to mortgage loans. His duties did not include any function relating to the collection of commissions on behalf of the P.R.C.U. from real estate brokers in connection with mortgage loans. The witness never received any commissions as auditor in connection with mortgage loan applications during those years or at any time. The only time the witness handled commissions was when they paid a finder's fee by check. Finder's fees were commissions paid by the P.R.C.U. and were paid in 1949 and 1950. They were paid by check on account the P.R.C.U. had with the First National Bank of

Chicago. No commissions were received or charged by the P.R.C.U. during the years 1949 and 1950 to the knowledge of the witness.

330-333 *Cross Examination.*

Mr. Marzec's duties were essentially clerical. He did not have an office at the P.R.C.U., but had a little enclosure with a regular size desk. There were seven persons in the one enclosure at the time.

331-333 (Thereupon the following colloquy between court and counsel took place.)

331 By Mr. Struett: If your Honor please, I just got from them—well, I have been through the Grand Jury testimony, and this book, and I got from them a summary of the entries, and basically I find there is an awful lot of it, and while I have been through it I think that our records show that we are trying to go along as fast as we can.

By Mr. Manion: You are referring to Mr. Sobieraj now?

By Mr. Struett: Yes. I got my accountant over here and I want to check this against our records, and I believe it is going to save all of us a lot of time if we could do it. It is a task that will take us a couple of hours at least. I am willing to go ahead if your Honor wishes,

332 but I call your Honor's attention to the fact that we will do it right away. We have our accountant over here now and it will take us a couple of hours to do it.

By the Court: Well, I want to try the lawsuit.

By Mr. Struett: I know, but this is important, your Honor, very, very important.

By the Court: What time will we have on trial?

By Mr. Struett: I don't know. I might be able to shorten my cross examination a great deal if I take this time.

By the Court: And you might not shorten it by two hours. I want to go through with this case.

By Mr. Manion: Mr. Struett has known we have this record for a long time.

By Mr. Struett: I knew the other day, but nobody ever offered it to me.

By the Court: I want to go ahead with the lawsuit.

By Mr. Struett: I want to check this book. I don't know what is in it without going through.

333 By the Court: Proceed with the cross examination. Put the witness on the stand.

(Testimony of Bruno L. Sobieraj, resumed.)

334-366 *Cross Examination.*

The witness had discussed his testimony with his attorney, Mr. Klein, and with the United States Attorney. He was not shown the affidavits that Mr. Marzec had furnished the government years ago. The witness believed that Mr. Marzec was paying the income taxes on the commissions.

The witness was sharing commissions with a man by the name of Kaczor under similar circumstances, but had shared no commissions or had any business dealings with Kusper.

Before the witness signed defendant's Exhibit 17, he received a form letter to appear at Mr. Wolfe's office for questioning. He did not consult with anybody before he went down to Mr. Wolfe's office. The witness denied having discussed the matter with Kusper and Brandt. Thereupon the following took place:

340 Q. And isn't it a fact that all three of you gentlemen received substantially the same letters and you all went down there and signed substantially the same sort of affidavit?

A. I don't know what they signed.

341 By Mr. Manion: I object, your Honor.

By Mr. Struett: Could I have the other affidavits?

By Mr. Manion: No, they are not material here.

By Mr. Struett: I would like to have the other affidavits.

By the Court: Sustained. The witness said they didn't go together. Sustained.

The witness stated that he had not read his Grand Jury testimony since the time he gave it or discussed his appearance before the grand jury with Mr. Kusper and Mr. Brandt. The only one he discussed it with was his attorney, with whom he talked before he appeared before the Grand jury. Thereupon the following occurred:

342 Q. Now, isn't it a fact that prior to the time that you went down and testified before the Grand Jury you had a conversation with Mr. Brandt and Mr. Kusper, and that you all three went down and gave testimony of substantial import as yours?

By Mr. Manion: I object to that, your Honor. It is beyond the knowledge of the witness as to what others would testify before the Grand Jury.

By the Court: I don't understand the question, anyhow. Sustained.

By Mr. Struett:

Q. I will put it to you another way, I will try to put it to you very simply:

Prior to the time you appeared before the Grand
343 Jury did you discuss your testimony of what you were going to testify, or your appearance before the Grand Jury, with Mr. Brandt or Mr. Kusper?

A. I never discussed it with Mr. Kusper, and I have only told Mr. Brandt I got—not before the Grand Jury; before the Grand Jury, nothing. I was thinking of the affidavit, but the Grand Jury, I didn't discuss it with anyone, absolutely no one except my attorney.

344 Q. You didn't have any understanding of any kind or character that you would all three go down there and give testimony of substantially the same import?

A. No, sir.

Before the Grand Jury on March 11, 1955, the witness admitted that he had testified that he had not talked with any of the other gentlemen outside concerning the testimony he was going to give before the Grand Jury. He then admitted that he had conversed with Mr. Brandt about it on that date and the day previous. Brandt had also talked about it on several occasions. The gentlemen referred to as being outside were Mr. Brandt and Mr. Kusper. The witness stated that he did not see Mr. Kusper outside of the Grand Jury room but did see Mr. Brandt; they did not discuss the matter at all. In a conversation with Mr. Brandt the day before, the latter had asked the witness what he was going to say before the Grand Jury. The witness did not ask them what the Grand Jury might be asking about since he knew what it was going to be. He knew this because he got a subpoena to bring all of his books on the Marzec case with him.

The witness took government's Exhibt 33, a little black book into the Grand Jury and made it available to the government at that time.

In 1946 and 1947 the Union had a substantial amount of money ($6,000,000) available which they were interested in loaning to the public in order to draw interest. At about that time, Marzec told the witness that Marzec was giving Brandt one per cent commission. Marzec also told the witness that he was to get one per cent. The witness believed that Marzec said that Kusper wanted to be in, but testified that Marzec did not say whether he gave the commission to Kusper or not. The witness did not know Kusper was in on it until after the investigation started. The witness never gave Kusper any money.

The witness had a partnership between himself and Mrs. Stanczewski, his mother-in-law. Originally it was his father-in-law's business, and the witness worked there. He was not a partner at that time. When the commissions were being paid, the witness would have Mr. Marzec make out certain checks to Mr. Stanczewski.

The witness denied holding out on his mother-in-law on the cash commissions. When Mr. Marzec used to bring the money in, the witness would say, "Don't talk too loud because we don't want everybody to know about it." He explained this by saying that the kitchen was right in back of his office and people would be in the kitchen.

The witness described his testimony before the Grand Jury as being generally truthful.

(Thereupon the Grand Jury testimony was marked as defendant's Exhibit 18 for identification and the witness was interrogated concerning specific questions and answers contained therein.)

The witness testified that he had never seen Brandt get any money and he did not know if Brandt got any money. Marzec might have said that he had given Brandt money, but the witness had never seen it. Later on, Marzec told the witness that Brandt was getting part of the money.

Thereupon the following took place:

359 Q. All right. Now, I will read you this question and here it is from the secretary of the Grand Jury: "He took his orders from Brandt."

Now, that refers to Marzec. Mr. Reeb is asking the questions.

"A. Yes."

The secretary of the Grand Jury then asked you:

"Q. Did you ever hear him mention that maybe Mr. Brandt had to get a share of that money?

"A. He never said that to me.

"Q. He never told you anyone was getting a share?

"A. He never said anything to me what was going on."

360 Were those questions asked you and did you make those answers?

A. If it is there, then I must have made them.

The witness never talked to Mr. Kusper and Mr. Brandt about these commissions. He knew that Miller, Banach, and Schroeder were paying commissions. He did not know Mrs. Clyde Cutler or Mr. Milton.

362 Thereafter the following proceedings occurred:

By Mr. Struett: Now, my cross-examination is substantially through and, unless they want to offer any records or substantiating material or summaries of them—I would like to have an opportunity to check them very thoroughly. I may have further cross-examination.

By Mr. Manion: Well, your Honor, we intended at this time to offer Government's Exhibit 33 for identification into evidence. If Mr. Struett is going to object to it, I will withdraw my offer.

Do you want us to leave this out?

Mr. Struett: You try your lawsuit. I am defending this man.

By Mr. Manion: I will offer the exhibit.

By Mr. Struett: I object to it. I haven't had an opportunity to check and cross-examine on it. It will take several hours to check. I haven't got my copy here to do it.

By Mr. Manion: We will stand on our offer of these exhibits, your Honor, as documents that have been identified by the witness, as part of his books and records that have been prepared in the regular course of his business.

By the Court: I am not sure that he did testify to that. Ask him those questions.

Thereafter the witness testified that the entries in government's Exhibit 33 were made by Mrs. Stanczewski on or about the same dates they bear in the regular course

of business of the W. Stanczewski Real Estate Company. All receipts, checks and disbursements were reported in the book. The witness and his mother-in-law did business as a partnership under the name of W. Stanczewski Co. The witness' father-in-law's name was Walter. He did business under that name and the witness and his mother-in-law continued the business. Government's Exhibit 33 was received over the objection of counsel for the defendant.

366-370 *Redirect Examination.*

The witness' attention was directed to an entry appearing in government's Exhibit 33 as to October 7, 1948, which showed that Kusper received Two hundred seventy five dollars. The witness had no independent recollection of making that payment to Mr. Kusper. The entries were made about the same time the disbursements were made. Subsequent to the time when the Internal Revenue Service first began to investigate Mr. Marzec for income tax purposes, he kept some future commissions to take care of some additional income tax that he had to pay. The witness had a conversation with Mr. Brandt about that subject. They agreed that Marzec would keep all of the commissions. That was following the time of the conversation with Marzec. Thereupon the following proceedings occurred:

368 By Mr. Struett: Before the witness goes, I want
369 to make a motion to strike the document. I haven't had ample time to cross-examine on it.

By the Court: It will be here subject to your examination, throughout the trial.

By Mr. Struett: The witness will be available if I want him?

By the Court: That is up to you. If you want him, you get him.

The witness delivered government's Exhibit 33 to Mr. Manion approximately three weeks ago. That was the day before the witness entered his plea of guilty in this case.

370 *Recross Examination.*

The book is in the witness' mother-in-law's handwriting and contains information given her by the witness insofar as it pertains to cash receipts.

Redirect Examination.

The witness' mother-in-law was charged with the duty of making entries in the book, and she would make them either from her own personal knowledge or from information received from the witness.

SAMUEL J. OSHEROFF, being first duly sworn, testified on behalf of the government:

371-397 *Direct Examination.*

The witness testified that he was a certified public accountant with the firm of Samuel Pop & Company, Los Angeles, California, by whom he had been employed for about one year. Prior to that time, beginning in October of 1951, he had been employed by Arthur J. Goldberg, a certified public accountant in Chicago. Prior to that time he had been an internal revenue agent for three years in the Internal Revenue Service. In connection with the examination of the return of Henry S. and Mary Banach for the year of 1949 which had been assigned to the witness for investigation, he discovered that there were certain amounts of money which had been paid out to Joseph T. Marzec. In questioning Mr. and Mrs. Banach, he was told that most of the amounts were required to be paid in cash and that a 1099 had been filed on the advice of their ac-

countant. There were sixty-seven checks in Banach's records made out to cash and bearing the notation on the back "Paid to Joseph T. Marzec" together with a description of the property and the amount of the mortgage; a certain percentage was the amount of the check. The witness had examined government's Exhibits 27-A through 27-Z and 27-AA through 27-II during his first examination of Mr. Banach's office and government's Exhibits 27-JJ through 27-OOO subsequently.

In September of 1950, the witness called Mr. Marzec to make an appointment to examine his books for the years 1948 and 1949 at his home. On September 26, 1950, the witness kept this appointment, examined the records of Mr. Marzec, saw that they agreed with the tax return filed by Mr. Marzec and asked Mr. Marzec a few questions. Mr. Marzec told the witness that these were real estate commissions and that he did not have a safety deposit box. Mr. Marzec's records for the year 1949 recorded the receipt of what he said was real estate commissions. Subsequently they turned out to be mortgage commissions. Mr. Marzec recorded deductions or commissions which he had paid to others in connection with 1949 and they agreed with deductions and commissions reported in the tax return.

After talking to Marzec, Banach told the witness that Harold Schroeder and Max Miller were doing business with Joe Marzec. The examination of Marzec's books showed commissions from Max Miller for the year 1949 amounting to probably around Twelve thousand dollars. Government's Exhibit 35 were work sheets prepared by the witness in the course of his examination of Mr. Marzec's records. Referring to this exhibit, the witness testified that Mr. Marzec reported gross commissions of Ten thousand one hundred twenty-two dollars from Max E. Miller; Three thousand three hundred thirty dollars from

William J. Hoppe and no other commissions for the year 1949. The return also showed commission expenses of Four thousand three hundred fifty dollars, including Six hundred seventy-five dollars to Bruno Sobieraj; the same amount to Stanley Kusper; One thousand five hundred dollars to William Stanczewski Company; and the same amount to B. Repsuk. Subsequently, the witness discovered that B. Repsuk was Kusper spelled backwards.

Subsequent to the witness' first meeting with Mr. Marzec, he contacted brokers whom he had been told were doing business with Marzec during the period between September of 1950 and April of 1951. He obtained a list of mortgages issued at the P. R. C. U. office; by looking at that list and by the finder's fees, he was able to find the entire list of brokers doing business with the P. R. C. U. He contacted a majority of the brokers on that list. He did not have any further conversation with Mr. Marzec from the time of his first meeting until April of 1951.

On April 12, 1951, he was present at a conversation with Mr. Marzec, his accountant, Arthur Wilson, Special Agent Donovan Johnson, Vito Konrad and a stenographer in the Special Agent's Office at 105 West Monroe. During that conference Marzec stated that he had never received money from Henry or Mary Banach. He stated he received a 1099 from them in February which had been returned to the Banach's with a letter by Mr. Wilson. He did admit to discrepancies as reported and subsequently reported regarding Max Miller. He stated that he had not received any other commissions than those reflected on the return.

In September of 1951, the witness examined the tax returns, books and records of Joseph Marzec for the calendar year 1950 in connection with Mr. Wolfe, a Special Agent in the Bureau of Internal Revenue. Government's Exhibit 35 contained his transcription of Marzec's records of commissions received and disbursements made during the

calendar year 1950. These records reflected commissions of Thirty-seven thousand dollars fifty cents. They were all received from Max Miller with the exception of Six hundred dollars from William Hoppe. It also showed unidentified "other commissions" One thousand dollars. These figures corresponded with the original tax return for that year. Government's Exhibit 1 and 2 were the returns which the witness examined. The 1950 return reflected commissions paid of Two thousand one hundred sixty dollars to Bruno Sobieraj; Four thousand four hundred ten dollars to William Stanczewski Company; and B. Respuk Four thousand seven hundred ten dollars, making a total of Eleven thousand two hundred eighty dollars. At the first meeting in 1951, Marzec definitely stated that he had no other income than that reflected except a possible adjustment with Max Miller's commissions.

Subsequent to that meeting there was another meeting in September, 1951 with Mr. Marzec, Mr. Wilson, Leonard Wolfe, and the witness in the Special Agent's Office at 105 West Monroe. Mr. Wolfe, who was conducting most of the examination, asked Mr. Marzec if he had received any commissions other than those reported and if he had mentioned at any time that he did split them with anybody. Mr. Marzec said, "I don't care to answer." Mr. Wolfe then turned to Mr. Wilson and said, "Your client is not talking." Mr. Wilson replied, "He won't tell even me anything."

397–420 *Cross Examination.*

The witness discovered amounts which had been paid to Marzec by Banach shortly before September 26, 1950 when he was examining Banach's 1949 return. He saw checks in excess of Thirty thousand dollars. At one conference, Banach stated that there were other brokers in the same situation. Thereafter he checked other brokers, including Max Miller, Mr. Hoppe and Mr. Schrader. He

obtained a list of commissions paid Marzec from Max Miller, saw checks from Mr. Hoppe agreeing with what Marzec had reported, but could not determine the amounts paid by Mr. Schrader. He then went to the P. R. C. U. and obtained the information from their records. He also had the information that Marzec was paying some commissions to Kusper, both as Kusper and as Repsak. He also had information that Marzec was paying Sobieraj. All of this information was available to him at the meeting of April 12, 1951.

The witness had examined defendant's Exhibit 15-A, a copy of the meeting which was held on April 12, 1951, which contained substantially the facts as to what took place at that meeting. The witness was fairly certain at the time of this meeting that Mr. Marzec was lying as to the Banachs. The Max Miller situation may not have been in the same circumstances as the Banachs. The distinction is that Max Miller paid him by checks made out to his order, which he endorsed and deposited to his account. The differences apparently arose through those checks which went into escrow. They were trying to get information from Marzec at the time as to whether he would admit doing business with Banach. Following which the following proceedings occurred:

405 Q. You didn't ask him about Schrader. You knew he was not admitting; why didn't you confront him with the Banach checks at that time? You had them.

A. Was it our duty to present that?

Q. I am asking you.

A. I was not conducting the situation. I was merely there as the examining agent, to investigate the records.

Q. I see. You knew at this conference he was sharing at least part of these commissions, and what they were you were not clear on?

A. That is correct.

406 Q. Why didn't you ask him with whom he was sharing these commissions?

A. At that point he would not admit receiving commissions, so how can you ask him how he shared them?

Q. You can ask him more specifically about the source of that money he paid to Respuk and Kusper and how he paid it and where it came from, and so forth?

A. He was asked, and he said those were commissions paid to them for helping him in deals.

The witness had no conference memorandum or diary entry as to the conversation which occurred in September of 1951. The witness was certain that the conference had occurred on September 28, 1951, because he made a memorandum of the time, but did not have a memorandum. He had only three conferences with Marzec, the ones concerning which he had testified substantially. He had a conference with Mr. Wilson outside of Mr. Marzec's presence. The first time Mr. Wilson called the witness was the day after the witness had been out to check Mr. Marzec's records, September 27, 1950. At that time Wilson told the witness that he had been retained by Marzec to represent him in the income tax matter which had come up although the witness had mentioned nothing about a possible tax deficiency to Mr. Marzec the day previously. After the first conversation and excluding telephone calls, Wilson spoke to the witness two different times and when the witness was examining for 1950 he and Mr. Wolfe were out at Mr. Wilson's office. At the time they were at the office, Mr. Wilson stated to the witness that his clients wouldn't tell him anything and that he would withdraw from the case if he could do so gracefully.

The witness knew a lawyer by the name of Tyrell Richardson and may have had one meeting at Mr. Richardson's office. The witness thought that at one time Mr. Richardson was called by Mr. Marzec to represent him.

Basically, the witness told Mr. Richardson nothing about the case. Mr. Richardson told the witness that he was going to represent Mr. Marzec along with Mr. Wilson. The witness told Mr. Richardson that he would not get anywhere dealing with the witness because it was out of the witness' hands.

The witness met Max Miller when he came to his office to examine the records in this matter and whenever he required additional information regarding checks. The witness never authorized Tyrrell Richardson to make a loan on the witness' behalf at the P. R. C. U. The witness did not make a loan there either. Miller had placed a loan on a piece of property before the witness purchased it. He saw an advertisement in the paper after he left government service, and it turned out to be Mr. Miller selling a piece of property which had a P. R. C. U. mortgage placed upon it about May 1, 1951. (The actual date was June 12, 1951.) The deal for this property was closed in January of 1952. The witness had left the Internal Revenue Service prior to that time (October, 1951) and gone to work for Mr. Goldberg. The witness did not believe that Mr. Goldberg was Mr. Miller's accountant at that time. The witness did not go right to work on Mr. Miller's records; he believed it was at least six to eight months after he left the government before he started to work on Miller's records.

In investigating this case, the witness and his associates had Mr. Sobieraj in, as the witness expressed it, "The situation being that nobody was telling anything and it was very difficult to find out anything at all except what we did find out and that is everybody saying that they had paid their commission moneys to Mr. Marzec." The witness believed that Mr. Sobieraj gave a statement to the special agents as did Mr. Kusper and Mr. Brandt. The witness was familiar with those statements. Thereupon the following proceedings took place:

419 By Mr. Struett: I think, to save time, Counsel, do you have the statements with you?

By Mr. Manion: You have Mr. Sobieraj's.

By Mr. Struett: Yes.

By Mr. Manion: And you want Mr. Brandt's and Mr. Kusper's?

420 By Mr. Struett: Yes, please. I want to have them identified.

By Mr. Manion: Your Honor, at this time, we can locate in our files the statement of Mrs. Brandt, although the statement of Mr. Kusper seems to have been misplaced. I have no objection to releasing the statements to Mr. Struett, as such, but I do object to releasing them to him on the grounds that this is not material issue in this lawsuit. Mr. Struett would appear to be trying Mr. Brandt and Mr. Kusper at the same time we are trying Mr. Marzec.

If he wants to lay a foundation to impeach Mr. Osheroff by this statement, I will be glad to give it to him. At this moment, this is part of the files of the Internal Revenue Department and he has not shown any grounds or reason for our showing that portion of the files to him.

By the Court: What are the grounds?

421 By Mr. Struett: It is a part of our case.

By the Court: For impeaching this witness?

By Mr. Struett: I don't want to impeach this witness. He says he took other statements.

By the Court: Do you object to this Counsel?

By Mr. Manion: Yes, your Honor.

By Mr. Struett: I want to—

By the Court: Sustained. Do you have anything further?

By Mr. Struett: I have to think it over.

By the Court: Think it over. You have two minutes.

By Mr. Struett: I can't think it over in two minutes. I am sorry.

By the Court: Your cross examination is concluded unless you proceed.

By Mr. Struett: I can't, your Honor.

By the Court: All right. Is there any redirect examination?

By Mr. Manion: Just a question.

422 *Redirect Examination.*

The witness did not negotiate for the purchase of the property from Mr. Marzec at any time before he left the Internal Revenue Service. The property was listed for sale in the Chicago Tribune in December, 1951, after he left the government. He purchased the property from Mr. Miller. Mr. Miller had placed a mortgage on it six or seven months before he purchased it. The witness did nothing in regard to negotiating the mortgage. Thereafter the following proceedings took place:

By the Court: Do you have anything further?

By Mr. Struett: I haven't had a chance to think the thing out. I haven't anything to say.

By the Court: Step down.

LEONARD B. WOLFE, being first duly sworn, testified on behalf of the government:

426-438 *Direct Examination.*

The witness stated that he was a special agent, employed by the Intelligence Division, Internal Revenue, United States Government. He had been employed by the Revenue Service approximately twenty years in that capacity. In July or August of 1951, he was assigned to the investigation of the tax returns of a Joseph T. Marzec. The duties of a special agent are to gather, obtain evidence and bind it up in regard to criminal prosecution, and if no criminal

prosecution, to bind it up to prove there are civil damages. Prior to filing, the witness interrogated Marzec about other income received by him. The witness conducted a joint investigation with Mr. Osheroff, an Internal Revenue Agent, in this case.

Following his assignment to the Marzec case, the witness arranged with Mr. Wilson, Marzec's accountant, to bring him in for a conference which took place September 20, 1951 in the office of the Intelligence Division at 105 West Monroe Street. Mr. Osheroff, Mr. Marzec, Arthur Wilson and the witness were present. Before calling in a stenographer to take the testimony, the witness started questioning Marzec. He asked Marzec if Marzec had failed to report any income in the line of commissions received from various real estate men. Marzec said, "I have nothing to say"; the witness then asked him if he got any commissions which he divided with the officers or his superiors in the Polish Roman Catholic Union, and Marzec said, "I do not wish to say", or "to talk". The witness turned to Mr. Wilson and said, "Your client doesn't wish to talk". Mr. Wilson said, "He doesn't talk to me. He doesn't wish to talk to me much." That ended the conference.

Following this conference, the witness called Mr. Wilson to ask if he could prevail upon Mr. Marzec to come into the office again. Two or three days later, Wilson told the witness he was not successful. The witness then signed and addressed a letter to Mr. Marzec requesting him to come into the office and adjust any matters which they had with regard to his income tax return. Government's Exhibit 36 is a copy of the letter which the witness addressed to Mr. Marzec. The copy was retained in the files of the Internal Revenue Service. Government's Exhibit 37 is the return receipt by registered mail that came back to the witness' office acknowledging receipt of the letter addressed to Mr. Marzec.

The next conference the witness had with Mr. Marzec was in the United States Attorney's Office in November, 1954, at which Mr. Struett, Mr. Rieger and Mr. Reeb were present together with the witness and Mr. Marzec. This conference occurred on November 8, 1954. At that conference Mr. Rieger and Mr. Struett mentioned that Marzec had a large book of kept records, that Marzec had an accountant, and that the accountant would get the figures that Marzec had with regard to these commission deals in order. The witness stated that, as he recalled, these books would be at the disposal of the United States Attorney, but they did not give them to the United States Attorney or the witness then. In the course of his examination of the 1949 and 1950 tax returns, he did not at any time have occasion to examine Marzec's books and records during the year 1951. He never participated with Osheroff in the examination of Marzec's records; Osheroff had done that before he had come to Wolfe. The books and records brought forward in 1954 at the United States Attorney's Office had never been available to him at any time.

438-468 *Cross-Examination.*

The witness stated that a special agent is the party who conducts investigation of a case to determine criminal prosecution. After the special agent has finished his investigation, he prepares his report and sends it back to the Civil Division for settlement or sends it with recommendation for prosecution as to one or more defendants. As the course of an investigation develops, one thing or another unfolds, usually. You start with a little bit and after you start you have first this one and then the other one, and sometimes when you get through you don't have any left, and sometimes you wind up only with the one you started with.

The only times the witness had anything to do with Mr. Marzec personally were the two conferences concerning which he testified. He had conversation outside of Mr. Marzec's presence with Mr. Wilson about the case. He had a conversation on September 28, 1951 in Mr. Wilson's office. Osheroff was with him at the time. Mr. Wilson said that he had difficulty getting information from Mr. Marzec. He also said that he did not know whether anyone in the Polish Roman Catholic Union shared in the collections made by Mr. Marzec. Mr. Wilson also said that he would just as soon get out of the case. The witness did not point out to Mr. Wilson that someone did share in the commission as shown by Marzec on his returns. As an experienced agent, the thought occurred to the witness that an employee in an inferior position must have had to share in any money he collected. The witness had no definite information on this and that is what they had to have. Mr. Marzec would not tell them anything.

The next conversation which the witness had with Wilson was October 28, 1951. Wilson had requested to come over to the witness' office. The witness had told him to bring Mr. Marzec in, but Wilson said he couldn't do it. Wilson said he wanted to come over and talk settlement of the civil case, he and Tyrrell Richardson. The witness said, "You will have to do the talking and we will do the listening. We cannot talk to you on civil settlement of this case." Wilson and Richardson came to the witness' office and the proposition was made that they would "settle for Joe Marzec, that Joe Marzec would settle the full civil damage, the full civil income tax liability as set out by Mr. Osheroff, and within five or six months." At that time the witness had substantially all of the information from the brokers who testified. At that time, the witness had just about concluded to clear the case for prosecution.

The witness had a slight conversation with Richardson

about this case in Max Miller's office while the witness was over there trying to straighten out some of the evidence. The witness believed Tyrrell Richardson said that they were trying to go up high to settle the case. The witness did not think they would get anywhere trying to settle the case.

The witness did not recall that Attorneys Rieger and Struett, on behalf of Marzec, offered two lengthy statements of Marzec (defendant's Exhibits 19 and 20) to the government at the conference in the United States Attorney's Office on November 8, 1954. He did not recall one of the agents saying, "We don't want those statements; we have got our case against Marzec, and we aren't interested in anyone else." He did not recall that Mr. Reeb took these statements. He had a faint recollection of those papers, but does not recall receiving them personally or seeing them at the conference table. He remembered Messrs. Struett and Rieger saying that their accountant would be available, that he had gone over the figures and similar statements.

The witness did not recall being present at a conference at which Mr. Lunsford, the head of Special Intelligence, was present. He did recall being present at a conference with Mr. Kabaker, Mr. Rieger and Mr. Tobin. At this point, the following proceedings took place:

455 By Mr. Manion: I object to that line of questioning at this time as going beyond the scope of the direct examination of the case. It seems to me Mr. Struett is now taking us into an entirely different field. If he wants to advance the defense along that line he is free to call these men in as his own witnesses in his own behalf in his own case in chief. I don't think this is the proper time to go into that line of interrogation.

By the Court: I don't remember anything about that in the direct.

By Mr. Struett: He testified about a conference he had in the United States Attorney's office on November 8th or December 8th.

By the Court: What year?

By Mr. Manion: 1954.

By Mr. Struett: 1954.

By the Court: No.

By Mr. Struett: I beg to differ with you. What date did he say?

456 By Mr. Manion: He testified about 1954, Mr. Struett.

By Mr. Struett: That is December 8, 1954?

By Mr. Manion: You are asking him now about 1955.

By Mr. Struett: All right. Now I asked him whether or not at that conference—

By the Court: Well, now which one? Let us know which one it is.

By Mr. Struett:

Q. Is it November 8th or December 8th?

A. November.

Q. November 8th.

By the Court: What year?

By Mr. Struett: 1954.

By the Court: Well, you were asking about 1955.

By Mr. Struett: That is right, which is about three months later.

By Mr. Manion: That is what I am objecting to.

457 By the Court: That is the reason there was an objection and that is the reason it is sustained.

By Mr. Struett: If your Honor please, I would like to make an offer of proof on this thing.

By the Court: Step into the jury room, ladies and gentlemen.

458 (Thereupon the following further proceedings were had in open court, outside the presence and hearing of the jury:)

By Mr. Struett: I offer to prove by this witness—

By the Court: Now, just wait a minute. Why do you suppose I sent that jury out?

By Mr. Struett: I beg your pardon.

By the Court: Proceed.

By Mr. Struett: I offer to prove by this witness that subsequent to November 8, 1954 there was a meeting in the office of the United States Attorney, Robert Tieken, which was attended by Arnold Kabaker, Joseph Tobin, Sam Crane. These are special agents. Arnold Kabaker and Sam Crane are special agents. Special agent—Freiberg, isn't it?

By the Witness: That is right.

By Mr. Struett: Mr. Tieken and Mr. Wolfe. And, in addition thereto, there was present Mr. Rieger on be-
459 half of the defendant Marzec and the substance of this conversation was that Mr. Rieger advised Mr. Tieken in their presence that he had delivered the two statements, Defendant's Exhibits 19 and 20 to the agents, or the United States Attorney Reeb on the date mentioned, November 8, 1954; that they fully set forth the true picture in this case; that there was additional accounting evidence which would be available to them and that the agents were reluctant to proceed with the investigation other than as against the defendant Marzec, since Marzec alone had been recommended for prosecution.

That it was the general consensus of that meeting and particularly so from the standpoint of the Revenue people, that they should proceed only against Mr. Marzec; that there were affidavits in the files by the other defendants, Kusper, Brandt and Sobieraj to the effect that they had not received any commissions and if they were called to

testify or anything, that they would take the Fifth
460 Amendment, and that during the course of that conversation, or as a part thereof, Mr. Tieken—oh, yes, and that the agents advised Mr. Tieken that they would not conduct any further investigation in this case without the authority of the Commissioner of Internal Revenue.

Now, that is my offer of proof from this witness.

By the Court: Any objection?

By Mr. Manion: Your Honor, we would object to the offer of proof at this time as being beyond the scope of the direct examination of this witness and not proper in the cross-examination, or in the Government's case as such. Further, we object—

By the Court: What was the latest conversation that this witness testified about?

By Mr. Manion: December or November of 1954, your Honor.

By the Court: This was subsequent, something that transpired in 1955?

461 By Mr. Manion: Subsequent, something that transpired in 1955.

By the Court: Objection sustained.

462 By Mr. Struett:

Q. I show you Defendant's Exhibit 17 for identification, and ask you whether or not you ever saw that before?

A. Yes, sir, I have.

Q. Where?

A. In the office of the Intelligenc Unit, in my file attached to the report which I wrote.

Q. And what is it?

A. It is an affidavit by Bruno Sobieraj. Wait a minute.

Q. What is the date?

A. It is dated October 16, 1951.

Q. I want you to tell us the circumstances under which you procured that affidavit?

By Mr. Manion: I will object to that on the same grounds as the prior question, your Honor.

By the Court: Sustained.

By Mr. Struett: If your Honor please, this man has made an investigation and—

By the Court: Sustained. Proceed to another question if you want to put one.

By Mr. Struett:

Q. Now, did you, on or about the date that you obtained this affidavit, obtain other affidavits from Mr. Brandt and Mr. Kusper?

By Mr. Manion: Objection.

By the Court: Sustained.

By Mr. Struett: I want to make an offer of proof on that.

By the Court: Step into the jury room, ladies and gentlemen.

(Thereupon the following further proceedings were had and taken, outside the presence and hearing of the jury.)

By the Court: Proceed.

By Mr. Struett: I offer to prove by this witness that as part of his investigation in this case, he obtained this affidavit from Bruno L. Sobieraj, which has been marked Defendant's Exhibit 17, and that on or about the same time he also obtained similar affidavits from Frank A. Brandt and Stanley Kusper, of substantially the same purport and effect.

464 By Mr. Manion: We object to the offer of proof on the grounds that it is not proper cross-examination of the witness.

By the Court: Sustained.

Bring in the jury. Have you any other like matters, before we bring the jury in.

By Mr. Struett: I don't know, your Honor. I am not well. I am doing the best I can here and you are just

pushing me and I am so nervous I don't know where I am going.

By the Court: Calm down now. We are trying a lawsuit.

By Mr. Struett: I know we are. I am representing a client and I am not well. I asked for a few minutes this morning and you wouldn't give them to me, and I am doing the best I can.

By the Court: I asked you if you had any like matters.

465 By Mr. Struett: I don't know; your Honor, I am trying to do the best I can.

By the Court: All right, bring in the jury.

(Thereupon the following further proceedings were had and taken, in the presence and hearing of the jury:)

By Mr. Struett:

Q. Now, I show you a letter—

By Mr. Struett: Mark this Defendant's Exhibit No. 21.

(Thereupon said document was marked Defendant's Exhibit 21 for identification.)

By Mr. Struett:

Q. (Continuing.) —dated September 16, 1954, and ask you what it is, and what it is about, and if it refreshes your recollection.

A. Well, this is a receipt attorney Rieger gave me for a number of cancelled checks which I was requested to deliver to him at his office.

Q. Now, those were checks which you had obtained
466 from Mr. Marzec during the course of this investigation, isn't that correct?

A. No. I did not obtain it.

Q. Well, Agent Osheroff did?

A. Agent Osheroff did.

Q. That is right. Now, who requested you to return those checks to Mr. Rieger?

By Mr. Manion: I am objecting again, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Did you have any conversation with me about those checks before you returned them?

By Mr. Manion: I object to that.

By the Court: Sustained.

By Mr. Struett: Very well.

By Mr. Struett:

Q. Did you have any conversation with Mr. Rieger about the return of those checks before you returned them?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett: I have another offer of proof to make here, your Honor. I am sorry.

467 By the Court: I asked you about that.

By Mr. Struett: I appreciate it.

By the Court: I asked you just four minutes ago if you had any further matters of that kind.

By Mr. Struett: I will make it later on, if it is satisfactory to the Court and the witness will be here. He is around here, anyhow. So, we won't take out the jury. I just want to reserve the right to make it. It will be very short. Will it be all right?

By the Court: You go ahead with your examination. Any matters that you want to present, now, that have to be presented outside of the presence of the jury, I want you to collect them. I don't want to spend the whole afternoon having these people walk back and forth.

By Mr. Struett: That is all.

By the Court: Any redirect examination?

468 By Mr. Manion: I have no further questions of this witness.

By the Court: Step down.

NICHOLAS M. RIEWER, being first duly sworn, testified on behalf of the government:

469-479 *Direct Examination.*

The witness testified that he was a technical advisor on the appellate staff of the Internal Revenue Service. In that capacity, he attended a conference at the Penal Division in the City of Chicago in the case of Joseph T. Marzec on September 12, 1952. In addition to the witness, Attorney Tyrrell Richardson, Arthur Wilson, a C. P. A., Mr. Marzec, an attorney for the government by the name of DeWan, and a court reporter, Ruth Halfeld, were present. The conference started by warning Mr. Marzec of his constitutional rights and then there were preliminary questions as his name, occupation, etc. A good deal of the conference was then conducted by Mr. Richardson asking Mr. Wilson what he had done for Mr. Marzec in trying to determine his tax liability in working with the agents. Mr. Marzec had very little to say outside of the preliminary questions. The general topic of discussion was how much he had received in commissions during the years 1949 and 1950. There was a big discrepancy as to what Mr. Marzec admitted he got. There was a discussion of checks from Mr. Banach and a discussion about a man named Max Miller. Mr. Wilson did most of the talking. Mr. Wilson said they only had an indication that there were about two checks and one deposit. That's all they seemed to know about. The witness stated that they denied receiving any other payments from Mr. Banach at that time. The witness believed that Mr. Marzec was asked whether he got commissions from Thomas Scott of J. Cutler Sheldon. The witness did not recall what Mr. Marzec said about those particular men. Mr. Marzec himself was never asked to answer questions at the conference

concerning commissions other than the ones reported in his tax return. Most of the talking was done between Mr. Richardson and Mr. Wilson. Mr. Wilson and Mr. Richardson tried to indicate that the commissions reflected in Marzec's tax return for the year 1949 were about all he received. They also mentioned something about an amended return having been filed for 1950. There was no discussion as to what specific commissions were included in the amended return. Government's Exhibit 34 is the transcript of the conference concerning which the witness testified. After refreshing his recollection from this transcript, the witness stated that Mr. Richardson and Mr. Wilson had concluded that all commissions were included in the amended return for 1950. The commissions paid to Mr. Marzec were reported to have been received from Max Miller. The representatives of the taxpayer admitted some commissions from Mr. Banach but didn't state specifically what amount. Marzec was asked if he got checks from Thomas B. Scott, but the witness did not remember whether Marzec admitted that he got them. After refreshing his recollection, the witness testified that Marzec denied that Mr. Scott paid him anything.

479-482 *Cross-Examination.*

The witness testified that he believed Wilson mentioned that he had prepared a net worth statement on everything else. The witness would expect an accountant to have his work papers supporting a net worth statement on paper so the witness could see what the accountant was driving at when the accountant presented the net worth statement. The conference at what was then the Regional Counsel's Office, was the final step before a case is sent back for civil settlement or forwarded to justice with a recommendation for prosecution. This case was forwarded as to Marzec only so far as the witness knew. The witness, having had

his recollection refreshed by reference to the transcript of the conference, testified that he remembered Richardson saying, "With Marzec's signatures on the checks—if you have them, my man—he's hooked and on his way to the penitentiary."

After the witness Riewer was excused, the following proceedings transpired:

483 By Mr. Struett: Your Honor, I would like to have an adjournment. Let's not fool around in this matter. I am just not well. I have gone along all the time since Monday. I am trying this case when I am not feeling well.

By the Court: Why can't you go on? Why can't your assistant take over?

By Mr. Struett: He doesn't know this case. He is just sitting here with me. I wouldn't say this to you if I didn't mean it.

By the Court: Step into the jury room, ladies and gentlemen:

(Thereupon the following further proceedings were had in open court, outside the hearing and presence of the jury:)

By the Court: Why can't we go ahead with this case?

By Mr. Struett: Because I don't feel well. I have gone along here since Monday. I take sleeping tablets at night to try to sleep. My legs are giving out, they are dead under me. I can't tell you any more. If your Honor will put this case over I will be here Monday morning and I will have had a little rest and I can finish it so quickly your Honor won't want to lose any time. I can finish it very quickly then.

By the Court: Is this your last witness, Mr. Manion?

485 By Mr. Manion: We will have Mr. Worcester and then Mr. Ruggaber will testify as to the tax computation. Mr. Ruggaber will testify to that.

By the Court: Who is Mr. Ruggaber?

By Mr. Manion: He is the gentleman who is our tax advisor and who has been present throughout the trial with Mr. Worcester.

By the Court: What is his name?

By Mr. Manion: Mr. Ruggaber.

By the Court: That is not the gentleman who just left the stand?

By Mr. Manion: No.

By Mr. Struett: If he is just going to give computations then let him give them to me and I will get through with it and then put him on and I will be ready Monday.

By the Court: If you get through with the evidence I will give you a little time to collect your thoughts. You can have over the week-end to try to collect your thoughts, but I would like to have the evidence in.

486 By Mr. Struett: Then let's try to go ahead with it.

By the Court: I will give you a chance to try to collect your thoughts after all the evidence is in, but let's get the evidence in first.

By Mr. Struett: All right.

KENNETH N. WORCESTER, being first duly sworn, testified on behalf of the government:

486-498 *Direct Examination.*

The witness testified that he was a special agent, Internal Revenue Service, United States Treasury. He had been present in the court room throughout the course of this trial, having been assigned by his superiors to assist the United States attorneys in the preparation of this case. He heard the evidence and saw the exhibits introduced on behalf of the government during the course of this trial.

He prepared summaries or work sheets on the basis of the evidence offered on behalf of the United States. Government's Exhibit 38 for identification was prepared by the witness based on the evidence he heard in the court room and the documents offered in evidence. Government's Exhibit 38-A is a summary of the alleged income received by the defendant Marzec during the year 1949 and government's Exhibit 38-B is a summary of the alleged income received by the defendant for the year 1950. The summaries were prepared from government's Exhibit 38 and were typed under the witness' supervision and direction.

Government's Exhibit 38-A was as follows:

Max Miller	$21,450.00	
Henry Banach	30,545.00	
Thomas G. Scott	5,355.00	
Cyril I. Milton	4,200.00	
William J. Hoppe	3,350.00	
Total commissions		$64,900.00
Paid out:		
Stanley T. Kusper	$ 2,175.00	
Bruno Sobieraj	7,848.33	
Frank A. Brandt	17,900.00	
		27,923.33
Remaining Commissions		$36,976.67

Government's Exhibit 38-B was as follows:

	1950	
Max Miller	$35,650.50	
Henry Banach	39,820.00	
Thomas G. Scott	1,725.00	
Cyril I. Milton	3,700.00	
William J. Hoppe	600.00	
J. Cutler Sheldon	7,500.00	
Total commissions		$88,995.50
Paid out:		
Stanley T. Kusper	$ 4,710.00	
Bruno Sobieraj	10,659.00	
Frank A. Brandt	28,325.00	
		43,604.00
Remaining Commissions		$45,391.50

Government's Exhibit 33-A shows receipts by Bruno Sobieraj from Joseph Marzec for the year 1949 from the book of Bruno Sobieraj. Government's Exhibit 33-B shows receipts by Bruno Sobieraj from Marzec for the year 1950 per the book of Bruno Sobieraj. These two exhibits were prepared by the witness and typed under his supervision. They reflect, to the best of the witness' knowledge all the income received by Sobieraj from Joseph T. Marzec in the calendar years of 1949 and 1950. In the preparation of government's Exhibits 38-A and 38-B, the witness didn't attribute any additional income to Marzec on the basis of Bruno Sobieraj's cash book. He used the book only to establish deductions and expenses. The witness took Sobieraj's book and made a list of the moneys and checks that he received from Marzec. These appear in government's Exhibits 38-A and B. The witness also determined deductions for commissions paid by the defendant Marzec to

Frank A. Brandt for the years 1949 and 1950 on the basis of an interview with Mr. Brandt. Mr. Brandt admitted receiving payments from Marzec but had no record of the payments he received. Brandt attempted to arrive at a figure, based on expenditures. Brandt stated that the total commissions for the period 1948 through 1952 were between Forty thousand dollars and Forty-five thousand dollars. Brandt was unable to tell what he had received in any particular year. Marzec stated that he had paid Brandt Seventeen Thousand Nine Hundred dollars in 1949 and Twenty-eight thousand two hundred thirty-five dollars in 1950. Based on Brandt's lack of records the witness credited Marzec for the amount he stated he gave to Brandt.

The witness likewise attempted to determine whether Marzec was entitled to deductions for commissions paid to Stanley Kusper in excess of the deductions stated in the tax returns for the years 1949 and 1950. He examined Kusper's books and records for those years which reflected the checks issued by Marzec to Kusper and Respuk. He did not find any additonal income from Mr. Marzec which was unreported.

Thereupon the following proceedings transpired:

497 By Mr. Manion: At this time, your Honor, the
498 Government will offer in evidence Exhibits 38-A and 38-B for identification, being summaries prepared by Mr. Worcester from his work sheets, Government's Group Exhibit 28.

Mr. Struett: I object.

By Mr. Manion: I will also offer in evidence Government's Exhibits 33-A and 33-B for identification, which are summaries prepared on the basis of Government's Exhibit 33 for identification.

By Mr. Struett: Well, I assume I can cross examine first.

Cross Examination by Mr. Struett.

Q. Now, let's understand this first. On these exhibits in 1949 and 1950 you show what commissions were paid to Mr. Marzec. In fact, they were all paid to Mr. Marzec, weren't they?

A. They were alleged to have been paid to Mr. Marzec.

Q. Your accounts are the result of your listening to the testimony as you sat here?

499 A. On the basis of what evidence I heard.

Q. You said that you went in and examined books, and that is an investigation, isn't it.

A. For payouts, by Mr. Marzec.

Q. For the year 1949, Mr. Marzec had $64,900.00 of income or commissions he received. Let's take it first for 1949.

There was $64,900.00 of commissions that he received?

A. If that is the figure on there. This is the total commissions of $64,900.00 shown on this schedule. That is the total of the evidence I heard in this court room that was allegedly paid to Mr. Marzec.

Q. There isn't much doubt it was paid to him, is there?

A. According to the evidence.

Q. That's right. Now, the second line is $2,175.00 to Stanley Kusper.

A. Yes, sir.

Q. There isn't any doubt he got $2,175, is there?

A. No, sir.

500 Q. There isn't any doubt in your mind he got a lot more, is there?

By Mr. Manion: I object to that, your Honor.

By the Court: He may answer.

By the Witness:

A. Based on my investigation, I could find no more money, whether he did or did not, I cannot say. He said

he did not, his records do not show the receipt of any more money.

By Mr. Struett: Q. His records would not show receipt of any more money, would they?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. I mean, if it was cash it wouldn't show on there, would it? Now, you have an affidavit in your file that Mr. Kusper got cash, haven't you, in the course of your investigation and that he was paid in cash?

By Mr. Manion: I object to that.

By the Court: Sustained. He testified to what he
501 heard here in open court and as to the records he looked at.

By Mr. Struett: I have got a right to show what their file shows here, whether they have got evidence.

By the Court: Objection sustained. Stay within the direct.

502 By Mr. Struett: I have got a right to show what their file shows here, whether they have got evidence.

By the Court: Objection sustained. Stay within the direct.

By Mr. Struett: I will have to make another offer of proof then.

By the Court: You just get on with the case until we come to the end of the day, and then we can make all the offers of proof.

By Mr. Struett: I am not in any shape to go ahead that way. I am sorry, your Honor. I just object to the whole thing. I will go ahead and do it to the best of my ability then.

By the Court: Is there any cross examination?

By Mr. Struett: I have got some, but—well, they have

got affidavits, and I don't want to say it in front of the jury, and that is the use of it?

By the Court: Is there any further cross examination?

503 By Mr. Struett: I can't, until I have made my offer of proof, and until I have made my position clear in this matter.

By the Court: I understand your position, and now I want you to go ahead with your cross examination. I will let you make your offer of proof at the end of the day. That is not very far away; that is just 37 minutes.

By Mr. Struett:

Q. Well, do you have any evidence in your files, in your Government files, that Mr. Kusper got paid any cash? Yes or not.

A. No, not that I can remember.

Q. You have an affidavit from Dorothy E. Sipora, who is his secretary, in your files?

A. Yes, I do have an affidavit from Miss Sipora.

Q. Then look at it.

(Addressing Mr. Manion): Let him see it.

By Mr. Manion: Do you want to see the affidavit, Mr. Worcester?

By the Witness: I would like to see it.

By Mr. Manion: All right.

504 (Document handed to the witness.)

By the Witness:

A. Oh, I recall. I don't see anything in here saying that he was paid cash.

By Mr. Struett:

Q. Now, you had a statement from this same lady in your files, did you not, dated December 29, 1954?

By Mr. Struett: Mark this the next defendant's number.

(Thereupon said document was marked Defendant's Exhibit 22 for identification.)

By Mr. Struett:

Q. You have read this, have you not?

A. Well, could I see that, please?

Q. That is her statement in full or in more detail.

A. I saw this statement in the office of the U. S. Attorney.

Q. Have you got a statement in your file from August Mroz—is that his name?

By Mr. Manion: M-r-o-z.

By Mr. Struett:

Q. Do you have a statement from him in your files?

505 A. Yes, he was interviewed.

Q. Did he say that Kusper got any cash commissions?

A. Not cash.

Q. What did he say?

A. Check. He said he got money.

Q. Did you ask him whether he got any money in cash?

A. I asked him whether he knew that Kusper received any cash, and he said he did not see any cash.

By Mr. Struett: Have you got the statement there?

By Mr. Manion: He has no written statement. Mr. Worcester and I talked to Mr. Mroz together.

By Mr. Struett:

Q. The Grand Jury found he got some of this cash, didn't they, when you presented this?

By Mr. Manion: I object.

By the Court: Sustained.

By Mr. Struett:

Q. You have got Mr. Marzec's testimony that he

506 paid Kusper part of cash, but you are still disallowing

it because Kusper denies it. Is that the idea of this thing?

A. I considered Mr. Mroz' statement.

Q. As I gather this story, you found that just about correct on Brandt, didn't you?

A. I wouldn't say that.

507 Q. Well, you got about the same figures and yet you are disallowing half of it because Sobieraj has made available to you the right book on his own statement? You are accepting Sobieraj's statement against Marzec's, isn't that right?

A. That is the only money I can find going to Sobieraj from Mr. Marzec.

Q. In other words, that is the only amount of money that Sobieraj would admit to you that he received, is that right?

A. That is the only amount that my investigation disclosed that Mr. Sobieraj received.

Q. And you would not give Mr. Marzec credit for this thing unless these other gentlemen admitted it, is that right?

A. I considered the amount he said he paid to these gentlemen.

Q. Of course you recognize, don't you, that all these gentlemen denied originally that they received anything?

By the Court: You are arguing now.

By Mr. Manion: I object.

By the Court: Yes.

508 By Mr. Struett:

Q. Isn't it a fact that all these gentlemen denied ever having received any of this money?

By Mr. Manion: I object to that, your Honor.

By the Court: Sustained.

By Mr. Struett:

Q. Now, you say you gave credit or consideration to Mr. Marzec. Mr. Marzec had some records there for you, didn't he?

A. He submitted a list that it was stated was prepared after all the transactions had been made, stating what he claims that he paid to these other people.

Q. That is not right, is it, sir?

A. Sir?

By Mr. Manion: I think that is it.

By Mr. Struett: I am just asking him.

By Mr. Struett:

Q. I would like to see that, where he says that is true. I don't know that is true. I am sorry.

509 You say it is true and I say it is not. Let's get the transcript.

(Addressing Mr. Manion.)

You show me where he said that.

By the Witness: Who?

By Mr. Struett:

Q. Show me where the list of statements made up after the transaction appears. Is that what you say?

A. He presented columnar sheets listing the description of the property, the amounts of moneys received by him, and the amount of money paid out to all these different people, and it was represented—that schedule was given to me and it was either made up after the transaction had occurred, or they thought that the schedule had been made up after the transactions had occurred.

Q. I think you and I are talking about two different things. This document (handing document to the witness) was submitted to you later, which was a summary. This is what you are talking about?

By Mr. Manion: Will you mark that for identification?

510 By Mr. Struett: Is this the same thing? Mark it the next number, and mark this one, too.

(Thereupon said documents were marked Defendant's Exhibits 23 and 24 for identification.)

By Mr. Struett:

Q. Is this the only list you took into consideration?

A. 1949-50. With respect to amounts, it is.

Q. You disregarded any other proof in the case because this was made up afterwards, is that right?

A. This is the only evidence I had from Mr. Marzec where he said or where he alleged that he paid out monies to these other two gentlemen.

Q. This is the only evidence you had?

A. Of amounts.

Q. These are the only figures, summary figures, you had of amounts, is it?

By Mr. Manion: I object to that as argumentative.

By the Court: Sustained.

By Mr. Manion: Going back and forth over the same thing.

511 By Mr. Struett:

Q. You had other evidence Mr. Marzec had paid out to these men, but you had the amounts in your possession, didn't you?

A. Those are the only things I can think of other than what—

Q. You had some original work sheets where he kept his original records showing how he distributed it. You had in addition to that a long statement where he discussed this detailed arrangement, didn't you?

By Mr. Manion: I object.

By Mr. Struett: Well—

By Mr. Struett:

Q. You had available in addition to that what the situation was and the checks that were shown, and what was done after 1951, and how they carried this thing into effect, didn't you?

By Mr. Manion: I object.

By the Court: Sustained. If you will get back to the direct, it might be desirable. Confine yourself to that.

By Mr. Struett: I would like a recess, your Honor.

512 By the Court: No, we will go on until four-thirty.

By Mr. Struett: I don't know what I want to ask this man now. I want to check these things over. I don't know what to ask.

By the Court: Conclude your cross-examination.

By Mr. Struett: I don't know anything right now to ask. I would like to have a chance to go over these things and a little opportunity to do so.

By the Court: How much time would you want?

By Mr. Struett: I would like to have until tomorrow morning and then have them put on their evidence. I have just got to have some rest. I am sorry.

By the Court: Would you be ready at ten o'clock tomorrow?

By Mr. Struett: I would like to have them proceed as to their other witness and then Monday I would like to proceed with my defense.

513 By the Court: No.

By Mr. Struett: I am not going to be rushed continuously. I just can't take it any more.

By the Court: Step into the jury room, ladies and gentlemen.

By Mr. Struett: I just can't take it.

(The following proceedings were had and taken out of the presence and hearing of the jury.)

By the Court: How much more cross-examination have you got of this witness?

By Mr. Struett: Judge, I don't think I have got any more. I don't know. I will let them finish tomorrow. Just give me a little more time.

By the Court: Are you through with this witness?

By Mr. Struett: I don't know.

By the Court: Tell me. Try it like a law suit.

By Mr. Struett: I am trying to try it like a law suit.

514 By the Court: Oh, my goodness.

By Mr. Struett: Oh, my God, I can't.

By the Court: Don't talk that way. I said "goodness".

By Mr. Struett: All right, I beg your pardon. Let this fellow go. I will stay here and let them put on Ruggaber tonight and then I will be ready Monday morning.

515 By the Court: No, we are going to finish this lawsuit, this evidence.

By Mr. Struett: But I can't take it any more, Judge. I am not able to.

By the Court: Yes, you can go on.

By Mr. Struett: I have to have an opportunity to talk to my client. I am not able to.

By the Court: Oh, yes, you are able.

By Mr. Struett: When I represent a client—I mean when I am not in a condition—

By the Court: Have you any more cross-examination?

By Mr. Struett: I don't know.

By the Court: I am asking you.

By Mr. Struett: What do you want me to do? I will do anything within reason.

By the Court: I want you to finish your cross-examination of this witness. Do you want me to dismiss him? I am asking you, do you want to ask him any more questions?

By Mr. Struett: I don't know. I have got a client
516 here to represent. I have been pushed and pushed here as long as I can take it, ever since Monday. I can't take it any more.

By the Court: Oh, you haven't worked one-half as hard as I have seen you work.

By Mr. Struett: Well, you saw me work when I was a lot younger.

By the Court: Do you want to ask this man any more questions?

By Mr. Struett: I don't know. I am honest with you.

By the Court: Have you any redirect?

By Mr. Manion: No, your Honor.

By the Court: Bring in the jury.

(Thereupon the following further proceedings were had in open court, in the presence and hearing of the jury.)

By Mr. Struett: If your Honor please, I make a motion to strike all the evidence.

By the Court: To what?

By Mr. Struett: To strike it.

By the Court: To strike what?

By Mr. Struett: His evidence.

517 By the Court: Motion denied. Have you any further cross-examination of this witness?

By Mr. Struett: I don't know, your Honor.

By the Court: If you have any ask your questions now.

By Mr. Struett: I am not able to do it, your Honor. I am sorry.

By the Court: Is there any redirect?

By Mr. Manion: No, your Honor.

By the Court: You may step down.

(Witness excused.)

By Mr. Manion: We have an offer pending of Government's Exhibits 33-A and 33-B and 38-A and B for identification, being summaries prepared by this witness.

By the Court: Is there any objection?

By Mr. Struett: I object to them all.

By the Court: What is your objection?

By Mr. Struett: I don't think they have been properly identified. I haven't had a chance to see some of them.

518 I don't know what is in part of them. I would like to check my records. I think my examination here has been limited. I need support, and I need a reasonable amount of time.

By the Court: I can't hear you.

By Mr. Struett: I object to it.

By the Court: Why?

By Mr. Struett: I have given it to you as best I can. I am sorry.

By the Court: The objection is overruled. They may be received. Proceed.

WILLIAM M. RUGGABER, being first duly sworn, testified on behalf of the government:

518-529 *Direct Examination.*

The witness stated that he is a technical advisor in the office of the Regional Counsel for Chicago, Internal Revenue Division, District Region. He assists the legal staff on questions pertaining to income tax and accounting on cases coming into the office for possible criminal prosecution. He also attends conferences with representatives of taxpayers. The witness testified he was able to determine the income tax due from a given individual for a given calendar year provided he was given the deductions, credits, exemptions and gross and net income figures for such an individual. The witness testified that he prepared Government's Exhibits 39 and 40 and that they were typed under his supervision. He had examined the tax returns for the defendant, Joseph T. Marzec, for the years 1949 and 1950 and the

amended income tax return for 1950 and had been present in the court room throughout the trial, having opportunity to examine the various documents offered in evidence by the government. The witness had examined Mr. Worcester's work sheets, government's group Exhibit 38. Government's Exhibit 39 is an itemization of the items appearing in government's Exhibit 1 for the calendar year 1949 in the first column, additions or changes in the second column, and corrected income in the third column. Government's Exhibit 40 is a similar document for the year 1950, with the adjustments made to that income as corrected. The witness testified that these exhibits were based on the evidence received and the testimony presented in his court only. (Over objection by plaintiff's counsel that the extive, GOVERNMENT'S EXHIBITS 39 and 40 were admitted in evidence.)

Over objection of defendant's counsel on the same grounds, the witness was permitted to testify that Marzec had a net income of Thirty-eight thousand six hundred sixty-four dollars and ten cents, a tax liability of Ten thousand seven hundred twenty four dollars and twenty-two cents for the year 1949 and that he still owed the government Nine thousand three hundred twenty-six dollars and fifty-six cents for that year; he was likewise permitted to testify over the same objections that Marzec had a net income of Forty-five thousand five hundred fifty-two dollars and seventy-nine cents, a tax liability of Fourteen thousand four hundred eighty dollars and eighty-nine cents, and still owed the government Nine thousand four hundred three dollars and seventeen cents for the year 1950. He was likewise permitted to testify that if the taxpayer had filed an amended return disclosing an additional income of Forty-one thousand eight hundred twenty dollars and no cents not reported in his original return for the year 1950, his tax liability on the amended return would be Twenty-

six thousand five hundred fifty-one dollars and twelve cents and that if the original return had disclosed a net income of Ten thousand seven hundred eighty-nine dollars and forty-three cents and a tax of One thousand three hundred ninety-seven dollars and sixty-four cents, additional tax due and owing for that calendar year would be Twenty-five thousand one hundred fifty-three dollars and forty-eight cents.

529 Thereupon the following proceedings occurred:

By Mr. Manion: At this time, your Honor, the Government would like to offer in evidence—

By the Court: Do you have any further witness?

By Mr. Manion: No, your Honor, I do not.

By the Court: What?

530 By Mr. Manion: No, your Honor, I do not.

By the Court: Have you advised counsel?

By Mr. Manion: Yes, I advised Mr. Struett at noon that we expected to finish.

I have several documents which were identified by witnesses in the course of the trial which I have not yet offered in evidence, Government's Exhibit 30 for identification, being the purported 1099 form testified to by the witness Samels and the witness Wilson.

By Mr. Struett: Wasn't that identified?

By Mr. Manion: Yes, it was. And I offer Government's Exhibit 31 and Government's Exhibit 32 for identification in evidence, correspondence between the accountant, Samels, and the accountant Wilson. And I offer Government's Exhibit 37 and Government's Exhibit 36 for identification, identified by Mr. Wolfe.

By the Court: Any objection to any of these?

By Mr. Struett: No.

By the Court: They may be received.

531 (Said documents, so offered and received in evidence, were marked respectively GOVERNMENT'S EXHIBITS 30, 31, 32, 36 and 37.)

By Mr. Manion: The Government rests its case on direct.

By the Court: Just a minute. You wanted to make an offer, Counsel?

By Mr. Struett: What?

By the Court: You wanted to make an offer of evidence?

By Mr. Struett: I don't remember now what it was, Judge. I am sorry, but I just don't remember what it was.

By the Court: The Government rests. You be ready to go ahead with the defense in the morning at 10:00 o'clock.

Thereupon the Government Rested its Case.

By the Court: The jury may return here at 10:00 o'clock tomorrow morning.

(Jury excused.)

By Mr. Struett: Your Honor, I am just not able to go ahead.

By the Court: Oh.

532 By Mr. Struett: Well, I am not. I am just not able to in fairness to myself and in fairness to my client. I will be ready Monday morning. I just can't do it. There is a limit here. I stood here all afternoon half sick. I have got to go home and go to bed. I slept about three hours last night. Now, there is just a limit to this thing.

By the Court: Go home and go to bed.

By Mr. Struett: How am I going to be prepared to go ahead at 10:00 o'clock in the morning? I haven't talked to my client. I haven't talked to my accountant. In fairness, I can't do it to my client. I will be ready Monday morning. I assure you I will be ready Monday morning. I assure you I will go through and go through fast.

By the Court: How many witnesses will you have Monday morning?

By Mr. Struett: Not more than three.

By the Court: Any objection?

By Mr. Manion: We have no objection.

By the Court: Bring in the jury. Listen, Mr. Struett. Mr. Struett, listen. Now, I am relying on your personal word to go ahead Monday morning.

533 By Mr. Struett: Unless I am in the hospital I will be here. I will go ahead.

By the Court: Oh, there is no hospital to it.

By Mr. Struett: All right, by golly.

534 By the Bailiff: Some of these jurors have left.

By the Court: The money it costs the United States. Tell the rest of them they needn't come in. When the others come in tomorrow morning tell them the case went over to Monday morning at ten o'clock.

What is your judgment, your best judgment as to how much time it will take after ten o'clock Monday morning?

By Mr. Struett: I think, if you want to give us a little time on this, I will give it to you now, but I would like to talk to them.

I think, your Honor, may be against me and I want to make an offer of proof on it and I want to save time on it. That is on this conversation at Mr. Tieken's office. I gather your Honor doesn't think that is material.

I will make an offer of proof.

By the Court: I think you got that idea out of your head.

By Mr. Struett: What?

By the Court: I think you got that idea out of your

535 head.

Mr. Struett: All right, I will make my offer of proof.

By the Court: You offered lots of things here that you didn't think were admissible.

By Mr. Struett: What?

By the Court: You offered a lot of things here that you didn't think were admissible.

By Mr. Struett: What did you say?

By the Court: I say, you offered a lot of things that

you didn't think were admissible at the time, and you were just trying it out.

By Mr. Struett: Judge, I am telling you, I bet it is all admissible. You can scream at me, but I bet you a dollar it is all admissible.

By Mr. Manion: I think the record should show that the Court has not screamed at counsel for the defendant.

By Mr. Struett: What do you want to bet?

By the Court: I don't think I want to make a bet.

536 By Mr. Struett: I'll bet you—can we get together and can we make that stipulation, make that offer and be done with it.

By the Court: I don't care.

By Mr. Struett: Can we do it? All right.

537 (Proceedings of February 11, 1957.)

At the opening of court, counsel for the defendant presented motions for directed verdict, to declare a mistrial and for a continuance. In the course of this argument, the following proceedings transpired with respect to the argument on government Exhibit 33, Sobieraj's book:

545 By the Court: What is your point?

By Mr. Struett: I do not think we should be compelled to go ahead in this case.

546 Now, as far as I am concerned, I never had this book. The first time I examined this book was yesterday. I think, your Honor, that this case closed with this book in here without proper cross examination, I think my motion to withdraw a juror is sound. I can only give it to your Honor.

By the Court: When did this book come into the hands of the District Attorney?

By Mr. Manion: On approximately the 12th of January. It was the day before Mr. Sobieraj entered a plea of guilty, your Honor. Now, in reply to what Mr. Struett is saying at this time, in the course of this trial on Tuesday or

Wednesday of last week after the close of the afternoon session I advised Mr. Struett and Mr. Rieger and Mr. Marzec, who were all at the counsel table, at that time that inquired of me what the Government intended to do with
regard to giving the defendant Marzec credit for in-
547 come received by the defendants Brandt and Sobieraj
who had pleaded guilty.

As the Court knows, the Government in a case of this nature is not required at all to give the defendants credit for any unreported deductions, but under the theories of the Bender and Horstein cases we can rely on such deductions and expenses as appear in the return.

However, we advised counsel and the defendant Marzec at that time that we believed that in the nature of the entire case in justice we should give him such credit for unreported deductions as we could establish, and we told them then we intended to introduce the records of the Government's Exhibit 33 and we told them that it would substantially record the receipt of approximately forty per cent of the commissions which the defendant Marzec had previously contended he had paid to the defendant Sobieraj.

We told them we were not able to confirm or deny
548 through Mr. Brandt the amount received by Mr. Brandt
for any total year because the total amounts submitted to us by Mr. Brandt were in excess of the amounts claimed by Marzec for either tax years, we had given arbitrarily credit for the full tax claim by Marzec, however we told them as to Kusper we had not been able to find any records to verify the claims of the defendant Marzec. The records of the defendant Kusper and defendant Marzec were substantially the same.

Defendant Kusper still denies receipt of any other funds, that we would still stand on the income tax returns as to the receipt of those moneys.

We have not misled Mr. Struett or Mr. Marzec at any

time as to what we had planned to do here. We went further than what the law obligates us to go in giving them credit for this. This record was not clearly introduced, and the agent so stated on the stand, for the purpose of any additional income of the defendant Marzec; rather,
549 we are taking income out of his hands by offering evidence of unreported deductions to which he had been entitled to his income tax computations.

550 By Mr. Struett: I'm sorry. I don't agree with you.

If your Honor please, I want to call your attention to one more matter.

I am not well. I can hardly stand up this morning. I have got a heart block; I have got my ulcer that came back on me yesterday afternoon. I have had pain all the time.

If your Honor wants to go ahead, I will go ahead to the best of my ability.

By the Court: I think we should go ahead.

When you take a retainer you take an obligation to your client, and you take an obligation to your Court, and you take an obligation to society.

By Mr. Struett: I understand that, your Honor. I have not had adequate time and have done the best I could to prepare this.

By the Court: I have held that you have had adequate time to prepare this case and I am still of that opinion.

By Mr. Struett: I am not prepared. I will do the
551 best I can, your Honor.

By the Court: If you are not prepared, it is your own fault.

By Mr. Struett: Presuming it is, your Honor, my client should not suffer under that.

By the Court: I cannot exercise good judgment for you. I can give him a fair trial and that is what I am trying to do. I want you to go ahead and give him a fair trial.

By Mr. Struett: I will go ahead and do the best I can.

If I need some time, if I am not well, I will call it to your Honor's attention.

By the Court: You have been talking about time ever since this case started, or shortly thereafter, and I want you to go ahead and try this case; perform your duty not only to your client, but to the Court and society.

Bring in the jury.

By Mr. Struett: May I have a ruling on these motions, if your Honor please?

552 By the Court: Motions are denied. Bring in the jury.

AUGUST F. MROZ, being first duly sworn, testified on behalf of the defendant:

553-575 *Direct Examination.*

The witness was employed from 1946 to 1950 as an assistant to Kusper, the general counsel of the P. R. C. U., handling the legal details of making loans under Kusper's supervision. Shortly before testifying, he conferred with Mr. Manion and Mr. Worcester at the witness' home and the matters concerning which he was about to testify were in substance what he told those gentlemen at that time. The witness had become acquainted with a broker by the name of Max Miller through the loan department of P. R. C. U. In addition he had occasion to meet brokers Harold Schrader, J. Cutler Sheldon, Hoppe and Scott at the escrow department of the Chicago Title & Trust Company in connection with loans made with the P. R. C. U. The witness had talked many times to Mr. Miller. Miller would tell the witness to rush matters through as fast as he could because the witness was to pay a certain percentage of commissions to Mr. Marzec. Sometimes he would say, "Yes sometimes I have to pay as high as five per cent."

Mr. Miller usually referred to Mr. Marzec as the "pay-off man" at the P. R. C. U. in the treasurer's office. He also testified that Mr. Miller usually mentioned he had to see that Joe Marzec paid one per cent to the general counsel. The witness said, "Is that so?" Miller said, "Oh, yes." Miller also said, "Yes, one per cent to each of the other boys." Miller told the witness that the other boys were some men in the treasurer's office connected with the loans.

561 Thereupon the following proceedings occured:

Q. Now, did you during the course of your conversation or in your work as aforesaid, when you concluded certain loans with Mr. Miller at the Title and Trust Company, did he ever deliver to you any envelopes to be delivered to Mr. Kusper

By Mr. Manion: I object to the materiality of that, your Honor.

By the Court: What is your theory as to the materiality of that?

By Mr. Struett: My theory of the matter is very simple, your Honor. We are going to produce direct evidence that Mr. Marzec paid Mr. Kusper these commissions and we have got a right to corroborate them by circumstantial evidence as to the method of operation of this man Kusper. Now, I mean that is just basic. If I have to go ahead and prove that Kusper got these commissions, I have a right not only to prove it by direct testimony of Mr. Marzec, but

I have a right to corrobrate it by circumstances in this 562 case. In other words, if they, for instance, were trying Mr. Kusper, they could prove not only by Mr. Marzec—

By the Court: But you are having this witness testify to a conversation with whom?

By Mr. Struett: Mr. Miller.

By the Court: Mr. Miller was on the stand. You didn't lay a foundation for impeachment.

By Mr. Struett: I asked him if he had any dealings with these people and he said no.

By the Court: You didn't lay a foundation for impeachment.

By Mr. Struett: Well, I would just as soon make an offer of proof here and be through with it, your Honor.

By the Court: Is there any objection to this? What is the pending question?

By Mr. Manion: The last pending question, your Honor, was as to whether or not Mr. Miller had delivered envelopes to Mr. Mroz to be delivered to Mr. Kusper. If it is for the purpose of corroborating direct evidence, I submit that
563 direct evidence should probably be introduced first.

By Mr. Struett: This man is going to the hospital this afternoon, your Honor.

By Mr. Manion: I have no desire to keep Mr. Mroz here if he is going back to the hospital. We know he has been under hospitalization—hospital treatment for some time. Does this relate to direct evidence you intend to introduce?

By Mr. Struett: It certainly does.

By Mr. Manion: By Mr. Miller?

By Mr. Struett: That is right. Mr. Miller said he never gave that woman Blanche any checks. It is all tied in together.

By Mr. Manion: I don't think that is what he said. Do you want to go to the record?

By the Court: Is there any objection?

By Mr. Manion: I object, yes, your Honor.

564 By the Court: Step into the jury room, ladies and gentlemen.

(And thereupon the jury retired to the jury room.)

(The following proceedings were had and taken outside of the presence and hearing of the jury:)

By Mr. Manion: If your Honor please, the Government's

position in this, briefly, is this: That we have no objection to Mr. Mroz's testimony with regard to any payments he delivered to Mr. Kusper if he in fact can testify to such payments. We have a pending indictment of Mr. Kusper and we certainly want to refuse evidence which will tend to prove our own indictment.

At the same time, the way Mr. Struett is offering this evidence is a little unclear to us, whether he is intending to impeach Mr. Miller, which we don't think he can properly do by this witness. And if Mr. Mroz is going to be able to testify as to payments to Mr. Kusper in addi-
565 tion to such payments as are claimed by Mr. Marzec in his tax returns and as has been admitted by Mr. Kusper by his records, we are very much interested in hearing such evidence if Mr. Struett assures us we are going to hear that kind of evidence, and I have certainly no objection to this man's testimony then.

By Mr. Struett: As the jury is out, I will make my offer of proof, your Honor. I think it is all competent, all relevant and all material to proof in this case, and I have given it some consideration.

May I make my offer of proof?

By the Court: Make your offer of proof.

By Mr. Struett: I offer to prove by this witness that sometimes when the loans of Max Miller were completed at the Chicago Title and Trust Company, Mr. Miller would hand him a sealed envelope and ask him to deliver it to Mr. Kusper; and upon this witness' inquiry of Mr. Miller "what is this?" Miller in substance would say, "This is a payoff to Kusper."

This witness would then deliver the envelope to Kusper.

That on one occasion Mr. Miller advised this witness that there was around $5,000.00 in the envelope.

I also offer to prove by this witness that he is in a posi-
tion to state—

By the Court: That he what?

By Mr. Struett: That he is in a position to state and testify from his activities in and about said Union, as he has detailed them heretofore, that it was common knowledge among the people working there that these brokers were paying these commissions to Mr. Marzec on these loans and that they were being split between the treasurer, the appraiser and the chief counsel.

Further, I offer to prove by this witness that Mr. Miller told this witness that Mrs. Stanley Kusper would see
567 Miller on Saturday mornings and make collections in her maiden name.

And I further offer to prove by this witness that that was substantially what he has heretofore testified to and what is contained in his offer of proof, what he told Mr. Manion and Mr. Worcester when he had his conversation with them.

By Mr. Manion: I would object, your Honor, to the materiality or competency, of any of this evidence to the issues in this case. If, in fact, Mr. Miller was making payments to Mr. Kusper, that is pertinent, most certainly, to the Kusper trial; but we submit it is not pertinent to this issue.

According to Mr. Struett, these monies would come directly to Mr. Miller, not via Mr. Marzec, and would have no value to Marzec whatsoever. We definitely want to talk to Mr. Mroz about it, if it is true; but we don't think it is material in this case.

As to conversations had between Miller and Mr.
568 Mroz, we submit that those are not material to the issues in our case.

As to these payments to Mrs. Kusper that Mr. Struett is referring to, I can see the only reason those would be probative at all, if at all, would be for the purpose of im-

peaching the witness Miller, and we do not believe Mr. Struett laid a foundation for such payments.

We know, as a matter of fact, that there were payments made into the name of—not to Mrs. Kusper—but to Mrs. Kusper's brother; but such payments were made prior to the tax years we have in question in this trial and Mr. Struett did not inquire of Mr. Miller anything other than payments as to Blanche and Blandette Wiersbicki.

By Mr. Struett: You told me, you had me confounded on the name. I will offer my proof on that.

By Mr. Manion: Nobody tried to confound you on anything, Mr. Struett. You could have asked him about
569 the time he was on the witness stand.

By the Court: I cannot see why these objections aren't good.

By Mr. Struett: I make my offer of proof and I think it is all material and relevant, if your Honor please.

By the Court: Have you completed your offer?

By Mr. Struett: Yes.

By the Court: Do you object?

By Mr. Manion: Yes, I do, your Honor.

By the Court: On the grounds you have stated?

By Mr. Manion: Yes.

570 In addition to these grounds Mr. Struett has also mentioned Mr. Mroz' testimony regarding general knowledge at the Polish Roman Catholic Union of Mr. Marzec as a collector. We believe that is apparent too from the evidence in this case. That hasn't added to anything already introduced in evidence, that he was in fact a collector. We have introduced evidence ourselves as to payments to all three and as to payments to two in excess of the amounts shown in the tax return and claimed as deductions by the defendant Marzec.

By the Court: Objection sustained.

570–576 It was stipulated between the parties that the Regional Counsel's Office of the Penal Division is a separate and distinct part of the Bureau from the investigating agents and the audit and review section; that it is under the chief counsel of the Bureau of Internal Revenue; that the people working there passing on these cases are lawyers rather than special agents, and that it is the final place within the Bureau where an income tax case is passed upon before it is sent to the Justice Department with the Bureau's recommendation for prosecution. The Government's objection to this stipulation on the grounds of materiality was sustained. Thereupon ensued a colloquy between counsel and the court concerning the Grand Jury minutes.

JOSEPH T. MARZEC, being first duly sworn, testified on his own behalf:

576–684 *Direct Examination.*

The defendant testified that he lives at 4182 West Barry Avenue, has a family of four children the oldest of which was 17, and the youngest, 5. He went to the seventh grade in grammar school, then took a commercial course at a small private school, went to work at 15 at a manufacturing company, first as a filing and billing clerk and then bookkeeping, and then studied bookkeeping and accounting at Northwestern as a special student. He started to work for the Polish Roman Catholic Union in 1937 and his duties were substantially as testified to by Mr. Kobylinski. He obtained an Illinois Real Estate Broker's license in 1945. While working for the Union in 1946, he made a few loans for brokers, got a commission on them and split the commissions between Sobieraj, a few directors, and himself.

In the fall of 1946, there was a new election of officers of the Union. Brandt was elected Treasurer and Marzec supported another slate. A short time thereafter, Brandt called him in, asked if he had made loans, Marzec said he had not, and Brandt said he understood that he had and was receiving commissions. He then talked to Sobieraj, who was the appraiser of the Union, who told him not to tell Brandt anything, since he, Marzec, was on the wrong side of the fence and that Brandt was sore at him and was going to fire him. A short time later, Brandt again called him, Marzec, in and said, "Something is going around, I can't put my finger on it". Marzec told him he did not know anything. Marzec then went back to Sobieraj and told him that the boss asked him again, and Sobieraj told him, "You had better keep your mouth shut until I straighten it out with him. I will straighten it out myself." Brandt then called Marzec in a third time, told him that the convention was over, that Marzec knew what was going on, and that he, Brandt, wanted to make a buck while he was there. Marzec then told him that these brokers brought in loans which first went to the Treasurer's office, then Sobieraj would make the appraisal, and when the loan goes through, the commission is distributed. He also told him that Kusper had control over it through a broker by the name of Boksa, who handled most of Miller's loans. These conversations with Brandt took place shortly after the convention in the fall of 1946, and as each of them occurred, he told Sobieraj about them. In his subsequent conversations with Brandt, Brandt asked Marzec to find out about the Boksa loans and whether Kusper had anything to do with them. He then went over to Miller's office, told him that Brandt wanted to know about the deal on the loans. Miller then gave him two of his checks made payable to Blanche Wiersbicki, Kusper's

wife's maiden name. Marsee showed the checks to Brandt and returned them to Miller.

At the third conversation, Brandt told him to go over and see the brokers and tell them that thereafter any loans they wanted they would have to talk to and contact and deal with Marsee. He also told Marsee that he wanted one per cent—one point—in cash. Marsee then told Sobieraj of his conversation with Brandt and Sobieraj said, "If Brandt is getting one point, I want one point." He also said that the appraisal was not good without his signature since they had to have an outside appraiser, and therefore "I am entitled to it." Then Kusper stopped him in the hall and stated he understood that Marsee was taking over the collection on these mortgages. Kusper said, "Don't forget, I am the attorney here. If Brandt gets one point, I get one point." Kusper said, "I am just as important here as he is." Marsee then contacted each of the brokers involved, told them substantially that he had been designated by Brandt to collect the commissions, and if they did not think that was correct, "You send in your applications, and you will find out they will be rejected." He contacted Miller, Schrader, Scott, Milton, Hoppe, Sheldon and Banash. Some of these brokers came in to see him at the office; others he went out to see.

He received these commissions either by checks payable to himself, cashiers checks endorsed and cashed by him, checks payable to cash, some endorsed by him, and in cash, much as detailed by the brokers who testified, and in the percentages testified to by the brokers. Miller would pay five percent where the checks were made payable to Marsee, and four percent where the checks were payable to cash and endorsed by Marsee. As to the commissions paid to him by check, most of them were deposited in his personal bank account. Most of the cash and cashiers checks were cashed. He distributed Kusper's share of the commissions

received by check to Kusper by checks payable either to Kusper or to Repsuk. Sobieraj's share was distributed by checks payable either to Sobieraj or to his partnership, W. Stanczewski & Co. At the beginning, he drew checks payable to Kusper; then Kusper stated that he did not want his name to appear so Marzec was henceforth to make the checks payable to Repsuk. Brandt's share, even of the commissions received by checks, was paid to him in cash. The commissions received in cash, by cash checks and by cashiers checks were distributed in cash, one percent each to Brandt, Sobieraj, Brandt and Kusper. On the Scott loans where three percent was involved, Brandt received one percent and there was a division of the balance. Kusper also received a little less on the Banach loans. In distributing these cash commissions to Brandt, Sobieraj and Kusper, Marzec would take a piece of paper, put on it the address of the building, the amount of the loan, and the amount of the commission. He would roll this paper around the cash, put a rubber band around it, and give it to each of the recipients, who knew what building and broker were involved.

Defendant's Exhibits 21 to 31 inclusive, were commission checks from Marzec given to Sobieraj for his distributive share of the commissions received, duly endorsed and which do not appear in Sobieraj's little black book (Government's Exhibit 33).

Defendant's Exhibit 26 for identification was a receipt given Marzec by the agent Osheroff on September 28, 1951 for checks which Marzec had given Kusper and Sobieraj.

Just prior to the noon recess, the Government objected to the materiality of a question as to any changes in the general method of operation subsequent to 1951. Thereafter, counsel made the following offer of proof:

625 "By Mr. Struett: If your Honor please, I want to prove by this witness that in 1951 the arrangement

testified to by him as to the sharing of these commissions was changed to a certain extent in that Mr. Kusper did not share in these commissions, and there are other details involved in that.

Then in 1952—

By the Court: Wait a minute. When was the first one?

By Mr. Struett: 1951, if your Honor please. The years of the indictment are 1949 and 1950.

626 By the Court: Yes.

By Mr. Struett: Then in 1952, Mr. Sobieraj came to him after there had been a change in certain offices of the Union, and stated that henceforth he was to have two per cent or two points of the commission; that is, if it was four per cent, he was to be paid half of that, he, Sobieraj; that he, Mr. Marzec, took the matter up with Mr. Brandt and told him what Sobieraj told him, Marzec; that Mr. Brandt then said, "Well, if that is the situation, he will have to have two per cent."

That thereafter under all these billings Mr. Sobieraj received his two points; that is, if it was four per cent, he received two per cent or two points, as Mr. Marzec says.

And that at that time all of these commissions that Marzec received were paid to Mr. Sobieraj by check, and Mr. Marzec has the checks in his pocket, he checked his records.

I want to offer those checks.

627 And then I want to offer the further testimony—offer to prove by this witness that as to the balance of the two percent of the two points or two percent, Mr. Marzec reported or picked up for his income tax purposes the other two per cent and then paid Mr. Brandt in cash, paying Mr. Brandt approximately one third of the two percent that Mr. Marzec kept.

And I offer that proof by this witness with all the supporting data and detail, his checks and records, and so forth and so on.

By Mr. Manion: We object to the offer, your Honor, on the grounds that the stated testimony in evidence has no probative value in this case and are not material to the issues of the case.

By the Court: Objection sustained.

• • • • •

Now I offer to prove by this witness, and he will so testify, that around September of 19—where are those other exhibits I offered this morning, the photostatic
628 copy?

By way of preliminary to that proof, I want to state this to your Honor:

There is identified a receipt by Mr. Osheroff of certain of these Repsuk and Sobieraj and Stanczewski checks. There are also identified certain of those checks, the checks themselves having been identified.

Part of these checks were returned to Mr. Marzec on June 13, 1952, and the balance of those checks, Government's Exhibits 25-A to, I believe it is, I, which have been identified, still remain in the agent's hands.

That Mr. Marzec communicated with Mr. Miller, he will so testify, told him his attorneys could not get those checks; that Mr. Miller said he would take the matter up with Mr. Wolfe, and then he called Mr. Marzec, said he
had taken the matter up with Mr. Wolfe, that is Spe-
629 cial Agent Wolfe, who testified here, and that Special Agent Wolfe would bring them over to Mr. Rieger's office.

I offer that proof.

By Mr. Manion: We will object to the materiality of that, your Honor.

By the Court: What does it prove or tend to prove?

By Mr. Struett: It tends to prove my theory of this case, your Honor.

By the Court: And that is?

By Mr. Struett: This whole situation is entitled to be developed before this jury.

By the Court: Is that all?

By Mr. Struett: Yes.

By the Court: Sustained. Bring in the jury."

After Osheroff had been in to examine his books, Marzec had a conference with broker Miller, who advised him that Osheroff had told Miller that neither Brandt, Sobieraj or Kusper had reported the cash received from these commissions. Marzec then questioned Sovieraj who stated that he thought that Marzec had paid the tax. Marzec asked him since when he was responsible for Sobieraj's income tax.

Shortly thereafter, Sobieraj called Marzec and asked him to go to dinner and told him that he, Sobieraj, had a friend he wanted to take along. Sobieraj said that the friend worked in the Federal Revenue Department. The dinner was held at Como's restaurant on Milwaukee Avenue. At this meeting, they went through the procedure about these cash commissions, and Sobieraj's friend asked, "Was there anybody present at the time?" When Marzec said there was not, the friend said, "In that case, it would be pretty hard to prove the cash". (On objection of the Government, this testimony was stricken as immaterial.)

Marzec also talked to Brandt about what Miller had told him. Brandt asked Marzec if he had paid the taxes. Marzec told Brandt, "With the amount of money I distributed, and what is left to me, how can I pay everybody's tax?"

Later Marzec had another conference with Miller who told him that he had talked to Brandt, Kusper and Sobieraj and they told Miller that the latter should advise Marzec to get a lawyer (this testimony was also stricken on the grounds of immateriality). Marzec told Brandt of the conversation with Miller, and Brandt said, "that is correct, you get yourself a lawyer because this cash is not

disclosed and we will settle this matter later on after the investigation is completed." Marzec then talked to Sobieraj concerning this conversation and Sobieraj told him, "Just keep quiet—when this is all investigated, when it comes to a head, we will settle the bill." Marzec then went to Miller who recommended Tyrrell Richardson; Marzec, Miller and Richardson then discussed the entire case. (The court refused to permit the witness to testify that he paid no money to Richardson at the time he employed him.)

Richardson recommended Wilson. Wilson came to Marzec's home around November or December of 1950, told Marzec how good he was, how many cases he had handled, that his clients were satisfied, and that he had worked for a few years with Richardson. Then Marzec brought his records over to Wilson's office. He told Wilson that there was involved a question of commissions which he had collected and paid out to the treasurer, the appraiser, and the attorney. He told Wilson that there were checks and cash and that, from the information he then had, none of the cash was reported. Wilson then advised him, "If it isn't reported, there is an investigation going on, and the best thing is to say nothing about it, let it come to a head, and then we will settle it."

Marzec had a conversation with Wilson concerning the form 1099 which Banach had forwarded to him, showing payment of $39,820.00. Marzec told Wilson that the amount involved was out of proportion, and Wilson told him that if he reported this money, "This will disclose that there is cash being paid out" and you will have to forget about it. Wilson then stated, "I will send this back and tell them we never got the money." Marzec never saw the letter which Wilson received from Samuels, but was told about it. About the time the 1950 returns were to be filed, Wilson told Marzec that he was working

on the case, trying to settle the whole thing without disclosing how the divisions were made. If they finally came to a settlement, they could pick the amount up by way of an amended return, and by so doing, it would probably show overpayment or over-reported income in the total tax. Then Wilson filed an amended return in June of 1951, picking up the $39,820.00.

Marzec was interviewed on April 12, 1951 at a conference in the Intelligence Unit of the Bureau and Defendant's Exhibit 15-A portrayed what occurred at that conference. Prior to the conference, Marzec told Richardson that he should go there since Marzec "cannot talk." Richardson told Marzec the latter had to go and suggested Wilson go along. Marzec discussed what they should say with Richardson. The latter stated that they probably would ask Marzec if he got cash and that, if Marzec disclosed it, the matter would be wide open and there would be an investigation of all of the officers. Richardson further advised him that if he did not disclose, "You will stay in one place and when it gets to the proper channels, we will settle it." Marzec then had substantially the same conversation with Wilson.

Defendant's exhibit 32 was a check dated June 21, 1952 payable to Richardson. The court refused to permit the witness to show that it was the first money he had paid Richardson or the only money that he had paid him and under what circumstances this money was paid to Richardson.

Marzec was present at a meeting held in the Regional Counsel's Office and attended by James T. DeWand, special attorney, Mr. Riewer, Richardson, and Wilson. (The court refused to permit Marzec to testify that after this meeting he had a conversation with Miller.) Thereupon the following proceedings occurred:

660 "Q. Did you then have a conversation with Mr. Brandt about this claimed meeting?

A. About the meeting?

Q. Yes.

A. Yes, I talked to him about this meeting. I said, 'Our attorney' that we had, 'evidently is not telling the truth, he has everything twisted.' I said, 'There is something wrong here', and I did not know what it was.

Q. What did he say?

A. Well, he said everything would straighten out by itself, 'if you wait, this thing will come to a head and we will get our bill to pay.' And he added to that, 'We are going into this year here. We are elected officers. We
661 have all the good years to make the money because we will make the loans.'

Q. Now, did you ever see or hear—hear from or see Mr. Richardson or Mr. Miller after these proceedings which took place in the Regional counsel's office as of September 12, 1952?

A. Thereafter I did not see any of them. In fact, I talked to Mr. Miller about locating Mr. Richardson. I finally got his place of business. I went over to see if I could talk to him. He had just a small cubbyhole in an office and Wilson the same way.

Thereafter, I did not hear from them any more.

662 Q. Now, I show you Defendant's Exhibit No. 16 and 16-A marked for identification and ask you whether or not you have ever seen that letter or a copy of that letter before it was produced in court by Mr. Wilson the other day?

A. No, I never saw the copy or original at any time.

Q. Now, when was the first time that you discovered that the case against you had been forwarded to the Department of Justice?

By Mr. Manion: I object to the materiality of that question.

By the Court: Sustained.

By Mr. Struett:

Q. You later found out this case was in the office of the United States Attorney, did you not?

A. Yes, I did.

Q. And you employed new counsel?

A. That is right."

Defendant's Exhibits 34 to 42 were notes kept by Marzec as he paid out money; they included the years 1949 and 1950 but were not complete. He searched for the others. He delivered these notes to the United States Attorney's office in August, 1955 in company with Mr. Hauptman and Mr. Rieger.

Thereafter a colloquy ensued between counsel for the defendant and the court concerning the defendant's theory of the case, at the close of which the following occurred:

671 "By Mr. Struett: I am going to make a complete offer of proof as to what each witness would testify to, and I have got that right here.

By the Court: Hereafter, you listen to what I say to you. I asked you if that was all you expected to prove and you said that was substantially all, whereupon I asked if there was an objection and I ruled.

Now you pay attention to what I ask you.

By Mr. Struett: May I make my offer of proof now?

By the Court: I thought you made it, but now go ahead and make it and make it complete and as quickly as you can.

By Mr. Struett: It will take me quite a little itme.

By the Court: I haven't any doubt it will.

By Mr. Struett: I offer to prove by this witness that

at the time he employed Mr. Tyrrell A. Richardson he was not asked for any money and he gave Mr. Richardson no money.

672 That he paid Mr. Richardson no money until June 21, 1952, at which time he delivered to him a check, Defendant's Exhibit No. 32 for identification for $500.00. That it was delivered to him in the presence of Mr. Miller and Mr. Richardson—

By the Court: Not "him." Will you please make a definite statement of what you intend to prove. Who is "him"?

• • • • •

By Mr. Struett: It was delivered to Mr. Richardson. I beg your Honor's pardon. In the presence of Mr. Miller. Mr. Richardson then wanted a thousand dollars. Mr. Miller said, "Give him $500.00."

And that was all the money that he at any time paid
673 Mr. Richardson. I then offer to prove by this witness that after the hearing in the Regional Counsel's office on September 12, 1952, he went back to Mr. Miller and asked him what was happening, whether these people were double-crossing him and whether Richardson was double-crossing him.

Mr. Richardson said, "No, that is just part of the plan. Say nothing, do nothing."

I offer to prove by this same witness that from September 25, 1952 he had no knowledge whatsoever of the status of his case, that during the same period of time he was being assured by Mr. Miller that the matter would be settled, and "just wait," they would get the bill.

674 In the fall of 1952 he was told by Mr. Miller that he would have a Christmas present for him and that the whole case would be settled when he got back and that the bills would be paid and everything would be over.

That in the summer of 1953 when he went on a fishing trip he was told that when he got back—

By the Court: Now, I asked you to quit using pronouns and use names. "He was told." Who told him.

By Mr. Struett: Mr. Miller, that it would be a short time. By the time he got back this case would be settled and everything was going fine.

That was sometime in September of 1953, a year later, Mr. Miller came out to the office and told him that he was in trouble, that he was going to be indicted and that he would go to the penitentiary.

By the Court: He? Who?

By Mr. Struett: Mr. Marzec.

By the Court: Now do not have me ask you that again. Now, just tell me what you want to tell me and name the persons.

675 By Mr. Struett: That then Mr. Miller sent him to another lawyer who was to make inquiry as to the status of the case. He found, this other lawyer—no, I mean, that then Mr. Miller advised him that the case was out in the United States Attorney's office ready for prosecution as to him only.

That he asked Mr. Miller what about these other defendants and Mr. Miller said that they had furnished the Government with affidavits that they had not shared in these commissions.

* * * * *

I now offer to prove by this witness that Mr. Miller then took him over to Mr. Rieger's office, that I was called into the case, the matter was discussed at great length, —and that later this witness, myself and Mr. Rieger appeared at a conference in the United States Attorney's office.

During the conference, I represented to those present, Mr. Tobin, was from the United States Attorney's office,

Mr. Crane was a special agent, Mr. Rieger was there, and I was there, and witness Marzec.

I represented to them in substance they did not have the right parties and the real people who got in this commission, that this witness, Mr. Marzec had much information available to them to establish that he had passed on these commissions to others; that he was willing to fully co-operate with the Government, make available to
677 them every fact that he had at his hands, and that during that conversation he was asked whether he would appear before the Grand Jury, sign an immunity waiver, and he stated that he would.

He was asked whether he would furnish or prepare a net worth statement to support his statements that he had paid these commissions to these other parties and he said that he would.

. . . . .

I will prove by other witnesses, I will just tie it in, that we were requested to get together a written statement of the facts supported by the documentary evidence; that this statement was prepared by myself, Mr. Rieger, comprising 120 pages; that it was supported by much doc-
678 umentary proof, and as I recollect, by these various sheets which I have mentioned.

I then offer to prove by this same witness that later on, November 8, 1954, this witness attended a conference in the office of the United States Attorney at which was present Mr. Reeb from the United States Attorney's office, Special Agent Wolfe, Special Agent Clement, and there is another agent's name—Freiberger, and at that time this statement which comprises 120 pages was delivered to Mr. Reeb; that thereafter in August of 1955 this witness, together with Mr. Rieger and his accountant, went over to the United States Attorney's office and delivered to the United States Attorney Reeb in the presence of this wit-

ness, photostatic copies of originals of Government's
679 Exhibits—Defendant's Exhibits 34 to 42 inclusive.

• • • • •

That he gave them a complete summary of all of the transactions on those buildings for the year 1949 and 1950, showing the distributions of these commissions.
680 That at this conference—there was made available to the United States Attorney all of this Defendant's checks for these years, and that we had the net worth statement which had been prepared by our accountants which would show, in substance, the fact, bearing in mind the amended return filed herein, which is Government's Exhibit 3, this man had reported income possibly in excess of any income he was due to report, so it wasn't in the same years."

Thereupon the government objected to the offer of proof except insofar as it tended to contradict or deny the evidence offered by the government through the witnesses Wolfe, Osheroff, Riewer and Wilson.

Thereafter, the following occurred:

683 "By the Court: You don't intend to offer specific denials of those matters counsel referred to?

By Mr. Struett: I have no such intention of offering any such proof.

By the Court: Objection will be sustained."

684-717 *Cross Examination.*

The witness identified Defendant's Exhibits 15 to 15-B as being a true report of the hearing before the Intelligence Unit on April 12, 1951, and stated that he was under oath, that he denied receiving commissions from Banach even though he did receive them and that he had not reported these commissions in his tax returns though he kept a portion of them. The only records he had of the

receipt of those commissions were Defendant's Exhibits 34 to 42. He then detailed the various commissions he had received from various brokers and how he distributed them. He stated that he kept no records of the cash other than Defendant's Exhibits 34 to 42 which were not complete.

The witness identified government's exhibit 41, a summary of the commissions distributed for the year 1949 and Government's Exhibit 42, the same summary for 1950. These documents were prepared by Marzec from records available and mortgage transactions of which the Union had a record. His own personal records which he showed Osheroff recorded only a portion of the commissions he received from Miller and the checks from Hoppe. They did not include the cash he received from Scott and Milton. He did not tell Brandt between the first of 1947 and June of 1948 that if Brandt let him alone he would be willing to give him a share of the commissions he was collecting.

At the meeting on September 12, 1952, he denied the receipt of any cash from Scott because he was "not suppose to talk until they arranged the whole thing." He did not know that the case was in the United State's Attorney's office until he employed his present lawyers in September, 1953. He did not tell any representative of the United States government that he received these commissions until that time, "because I was not suppose to tell them"; he did not tell anyone from the government during the course of the investigation that he had shared these commissions with others.

He did not claim any deduction in his return for cash payments to Brandt, Kusper and Sobieraj. He did not show in his amended return that he had paid most of the $39,820 received from Banach to Brandt, Kusper and

Sobieraj; the only deductions in his returns were for checks paid to Sobieraj, Stanczewski, Stanley Kusper and D. Repsuk.

(Proceedings of February 12, 1957.)

722-739 *Direct Examination.*

The witness was one of the attorneys for Mr. Marzec in this case. He was employed in the latter part of 1953.

(Thereupon counsel for the defendant made the following offer of proof out of the presence and hearing of the jury).

723 "I offer to show by this witness on the stand that if he were permitted to testify he would testify that he had a conference with United States Attorney Robert Tieken at the United States Court House on February 24, 1955.

724 That the witness advised Mr. Tieken that Joseph A. Struett and he had been consulted by Joseph T. Marzec in October, 1953 in the Marzec tax matter. That the file had then been forwarded to the United States Attorney Otto Kerner on March 13, 1953 for prosecution against Joseph T. Marzec only.

That Joseph T. Marzec was a clerk employed by the Polish Roman Catholic Union, that he was not an officer or director and was not an appraiser; that he had nothing to do with nor any control over the appraisal of property on which loans were requested for, upon the acceptance or rejection of application, nor upon the amount of the loan to be granted.

I further offer to prove by this witness that Mr. Rieger —told Mr. Tieken that a conference was held in early 1954 with Assistant United States Attorney Mr. Tobin,

725 special agent intelligence Samuel Crane, the defendant, Joseph T. Marzec, Joseph A. Struett and this witness.

That Mr. Tobin was advised at that meeting that Mr. Marzec had had an attorney not of his own choosing, and an accountant recommended by said attorney during the investigation by the Internal Revenue Service.

That Mr. Marzec had offered to submit to the Government all his records and sheets of original entry and other evidence which would show that Mr. Marzec, the defendant, was only a collector, that he distributed the commissions that he received, in a regular pattern substantially as follows:"

* * * * *

(The pattern described was essentially that testified to by the defendant and is therefore omitted.)

* * * * *

727 "* * * that Mr. Tobin had stated at the conference that the Government had affidavits signed by Brandt, Sobieraj and Kusper, all of which were to the effect that they had not received any commissions from Marzec in cash."

That Mr. Tobin said that he had talked to Mr. Kerner about the matter, that the United States Attorney, Mr. Kerner, wanted to know whether Marzec was willing to sign an immunity waiver and appear before a grand jury, and Mr. Tobin was advised that Mr. Marzec would do so and would fully cooperate with the Government.

728 And that Mr. Tobin had requested that Mr. Marzec prepare a net worth statement, and further advised all the parties to that conference that Mr. Kerner had suggested or instructed that a letter be sent to Washington for instructions of how to proceed.

I further offer to show by this same witness that this witness advised Mr. Tieken, the United States Attorney, that Mr. Marzec had filed an amended return of his 1950 income tax, and had included additional income commissions of approximately $39,000.00 and that he had paid,

of that $39,000.00 approximately three forths of it having been distributed to Brandt, Sobieraj and Kusper; that this witness at the time exhibited to Mr. Tieken several blue sheets of original entry, which have been identified here as—Defendant's Exhibit No. 42—on which were listed
729 various loans, street addresses showing those loans rejected and those accepted, and the division of the commissions and to whom paid, and that said blue sheets were prepared at approximately, the date at the time and checked off as these loans were processed.

That in addition thereto, this witness exhibited to Mr. Tieken the original of two sheets, both of which have now been identified as Government's Exhibits Nos. 41 and 42 for identification, and that at the bottom of the last sheet, as would appear, that the defendant, though reporting of the additional $39,000.00 in his amended return and having made the distribution as Mr. Tieken was advised, he may have overstated his income, bearing in mind the amended return, by approximately ten or twelve thousand dollars.

730 That at the time, I further offer to show that at this conference with Mr. Tieken, this witness advised him that Mr. Marzec had prepared a written statement consisting of over 100 pages, which has been identified here as Defendant's Exhibits 19 and 20.

* * * * *

Which had been delivered on November 8th, 1954 to Mr. Reeb, then Assistant United States Attorney, at a conference at which were present Special Agent Clena of the Intelligence Division, Special Agent Wolfe of the Intelligence Division, Mr. Marzec, Mr. Struett and this witness, and at that time this written statement, typewritten statement, was given to the Government.

That in addition, at this meeting, this witness had in his possession a statement by one Dorothy Sipiora which has

been identified as—Defendant's Exhibit No. 22 which was made available to Mr. Tieken—later in the same day.

732 I further offer to prove by this witness that he advised Mr. Tieken that there had been no further investigation made of this case from the time of the first conference in February, 1954, until the then meeting, which was then approximately as stated, February 24, 1955.

I further offer to prove by this witness that thereafter on the same day in the afternoon of February 24, 1955, a conference was held in the office of Mr. Tieken at which this witness was present, and at which were present Mr. Lonsford, Chief of the Intelligence Unit, Mr. Freiberger, Special Agent of the Intelligence Unit, Leonard Wolfe, Special Agent of the Intelligence Unit, Arnold Baker, Special Agent of the Intelligence Division, Sam Crane, Special Agent of the Intelligence Division, Mr. Tobin, the United States Attorney, and this witness.

733 At this conference the entire case was reviewed, and this witness then delivered to Mr. Tieken and to the Government the statement of Miss Sipiora which has been identified as Defendant's Exhibit 22, said Dorothy Sipiora being the former legal secretary of Kusper, the general counsel of the Polish Roman Catholic Union.

I further offer to prove by this witness that on February 25, 1955, this witness had another conference with the United States Attorney in which Mr. Tieken advised this witness that the Marzec case had been referred to a special Federal Grand Jury for investigation; that on March 10, 1955 this witness held a conference with United States Attorney Robert Tieken and Assistant United States Attorney William Reeb, at which time he was asked to and did promise to produce Joseph T. Marzec as a witness before the Grand Jury on March 11, 1955, and assured

734 said persons that said Marzec would fully co-operate with the Government, testify against these other de-

fendants, and make available to them all his records and data, and all other evidence and information which would tend to prove that he had been only a collector, and that he had distributed most of these commissions which he had received to Frank Brandt, treasurer of the Polish Roman Catholic Union, Mr. Sobieraj, the appraiser, and Stanley Kusper, retaining approximately a quarter thereof where four per cent was involved for himself.

• • • • •

"• • • and at this conference Mr. Reeb stated that he had to have Mr. Marzec's testimony in order to prove the Government's case against the three other persons, should their case be presented to the Grand Jury and should they be indicted.

I further offer to prove by this witness that on March
735 11, 1955, Mr. Marzec and this witness were present in the office of the United States Attorney Tieken, and that this witness was advised that Mr. Marzec would be asked to appear before the Grand Jury, and that Mr. Marzec should take with him the statements that this witness had exhibited to the United States Attorney, which contained a list of the mortgage loans, the amount of commissions paid and the amounts of commissions paid to Brandt, Sobieraj and Kusper.

• • • • •

(Thereupon the government objected to the foregoing offer of proof on the grounds of materiality and as an imposition on the court. After further colloquy, the court ruled as follows:)

738 "By the Court: I can't see a thing in it except an effort of a defendant or prospective defendant in a criminal case to ingratiate himself with the prosecutor, not a thing. The objection will be sustained."

Thereupon the jury returned, JOSEPH T. MARZEC resumed the stand, and testified further on his own behalf:

Redirect Examination.

739–756 The witness was present when Government's Exhibits 41 and 42 were offered to the government. He prepared them from the original mortgage records that he had submitted to Osheroff when he started the investigation and in addition from Defendant's Exhibits 34 to 42. (Upon objection by the Government, the witness was not permitted to testify that he had never been asked concerning these documents or their contents by any government official up to the time of trial.) During the course of the Bureau's investigation, no one in the government had ever asked him if he shared these commissions with Brandt, Kusper or Sobieraj. He heard the testimony of Osheroff and Wolfe concerning the conference of September, 1951 in which he had allegedly refused to say anything. He did not remember such a conference; he had attended two conferences, the last being in the Regional Conferences and both being the conferences of which transcripts were produced at the trial.

He was present at a conference with Mr. Tobin, Assistant United States attorney at which he said that the government could have all of his records, whatever records he had made on these loans, and he would show them how the commissions were distributed. He also offered to submit a net worth statement and any other documents the government wished to have.

He was also present at a conference participated in by Mr. Reeb, then an Assistant United States Attorney, and he said that we have our statements here, everything in them is correct, and "we are offering this evidence." These statements were offered to the agents. Mr. Klenha

said he was not interested because Marzec, "could not prove or produce a witness who saw me passing money," and Klenha was, "satisfied with the evidence they had." The statements were left with Mr. Reeb.

Government's Exhibits 41 and 42 were part of the records delivered to Mr. Reeb in August of 1955. There were also some cancelled checks delivered.

The witness appeared before the Grand Jury and testified.

757–786 *Recross Examination.*

Marzec did not know whether he appeared before the Grand Jury willingly or not, but his attorney told him he would be a witness before the Grand Jury. (The United States Attorney was granted leave to open up the Grand Jury minutes and establish, through interrogation of the witness from them, that Marzec had been advised of his constitutional rights, had been told that he was not required to testify, that he was under investigation and that an indictment might be returned against him.) The witness again told how he had prepared Government's Exhibits 41 and 42 and again stated what documents he had furnished to the government.

Thereupon the following proceedings took place:

772 "By Mr. Manion:

Q. I show you two documents marked as Defendant's Exhibits 19 and 20 for identification, and ask you if those documents represent substantially all of the rest of the information or documents you furnished to the United States Attorney in this matter?

A. Not in detail, no.

773 Q. What other documents did you furnish to the United States Attorney, Mr. Marzec?

* * * * *

A. The original of this document here (indicating). This document Exhibit 46 was already in the possession of the Department.

Q. We talked about that document—now we talked about 34 through 42.

A. This exhibit here 42, was submitted. The statements were submitted.

Q. That would be Defendant's Exhibits 19 and 20 for identification?

A. That is correct.

Q. Now what other documents did you ever furnish the United States Attorney?

A. The distribution sheet that you saw there.

* * * * *

774 "Q. You are referring to these documents, Government's Exhibits 41 and 42 for identification?

"A. That is right.

In addition, the witness testified that he had submitted all the cancelled checks but that they did not tend to prove payment of commissions by the witness to others in excess of the amounts claimed in his tax returns. He further testified that the government had not challenged the accuracy of the commission payments claimed in his tax return.

Defendant's Exhibits 19 and 20 were not under oath or signed. The witness had given the government nothing to corroborate the figures in Government's Exhibits 41 and 42 as to total amounts but had given the distribution and percentages. The witness kept Exhibits 34 through 42 for identification which recorded the amount of the loan but not the dollars and cents payments to anyone.

The witness did not recall that Mr. Klenha, at the meeting of November 8, 1954, made it very clear to him that the government was not interested in receiving these documents unless it was understood that there was no promise

of immunity or any special consideration to be given to the witness in exchange for those documents. The witness stated that he would say that Mr. Klenha did not make that statement.

The witness did not recall that, at the same conference, Mr. Reeb told him that Mr. Reeb considered Defendant's Exhibits 19 and 20 as a "deathbed confession" on his part. He testified that Mr. Reeb had said he would take the documents and examine them.

The witness stated that he talked to Mr. Reeb briefly before he went to the Grand Jury in 1955, and he was asked a list of questions which had been previously submitted to and agreed upon by the witnesses' attorney. Mr. Rieger had advised the witness of the questions which were and had told the witness to answer these questions. No one within the government had offered him any inducement in connection with the documents which he furnished to the government.

Marzec's Grand Jury testimony was marked as Defendant's Exhibit 44 and offered in evidence. Counsel for the Government objected on the grounds that it was not material. Thereupon a colloquy concerning its admissibility ensued, terminating as follows:

786 "If Mr. Marzec wants to give such testimony, Mr. Struett should interrogate him.

By Mr. Struett: I will go right through it then.

By Mr. Manion: You don't have to go through that, Mr. Struett. Ask him the questions, unless you are impeaching your own witness.

By Mr. Struett: I move to declare a mistrial and the withdrawal of a juror. That is an irresponsible statement.

By the Court: Motion denied.

786 ***Redirect Examination.***

Mr. Marzec testified that he had paid over to Frank A. Brandt in his testimony before the Grand Jury on March 11, 1955. At that point an objection was made on the grounds that the use of the Grand Jury testimony was not proper redirect examination. Defendant's counsel asserted that since the government had interrogated the witness on part of the testimony, defendant's counsel was entitled to interrogate as to the balance. Thereupon, the court stated that all that the government had used in interrogation was the portion from page 578 down to the question, "And has your attorney advised you?" The court then sustained the objection except as to that portion of the transcript, and the following colloquy ensued:

791 "By Mr. Struett: If your Honor please, as I recall the testimony, he said, "You were told by your attorney you would be asked certain specific questions—"

792 By the Court: That wasn't the examination here, and—

By Mr. Struett: And that is all he testified so. That is my understanding of the record. And that is what the record shows.

By the Court: Now, you are talking about a different part of the record. I am talking about the Grand Jury minutes.

By Mr. Struett: I am talking about his interrogation of this witness if your Honor please.

By the Court: I have ruled. That is the end of it right now.

Thereupon the following rulings were had upon the admissibility of the defendant's exhibits:

798 "By Mr. Struett: Now I offer in evidence Government's Exhibit 32, the Richardson check of $500.00.

799 You remember your Honor excluded that testimony,

and I assume the same ruling will be entered on that as to this check.

By Mr. Manion: We object to that on the grounds of materiality.

By the Court: Objection sustained.

• • • • •

803 "By Mr. Struett: Now I offer in evidence Defendant's Exhibit No. 16-A and 16 which are the letter and the envelope which Mr. Wilson produced from his files which he got from the Regional Counsel's office advising that the case had gone to the Attorney General's office.

By Mr. Manion: I object on the grounds of materiality and relevancy.

By the Court: Sustained.

By Mr. Struett: Now I offer in evidence Government's —rather, Defendant's Exhibit No. 26 which is a check or receipt rather from Samuel J. Osheroff for certain checks he turned over to Mr. Wilson on 9/28/51.

By Mr. Manion: I object to that on the same grounds, materiality and relevancy.

• • • • •

804 I submit its only probative value is to establish these checks were delivered in fact by Wilson to Osheroff and I submit that is not in issue in this case.

By the Court: I don't see how it can do any more than to confuse the jury. Objection sustained.

• • • • •

805 Thereupon the court sustained objections that Defendant's Exhibits 25-A to 25-I, checks identified by the defendant and payable to "B. Rupsek" were not relevant to any issue in the case since they represented payments reported by Mr. Marzec in his tax returns and would only confuse the jury.

Likewise, the court sustained objections to Defendant's

Exhibit 9, being a statement of commissions paid by Miller to Marzec for the year 1948 and 1949, delivered to the agents in the early part of the investigation. The objections were predicated on the grounds of the best evidence rule, no foundation for its use to impeach, and no relevancy to any issue in the case.

An objection to Defendant's Exhibit 21, Agent Wolfe's receipt for the balance of the checks, was sustained on the same grounds as the objection to Defendant's Exhibit 26.

The court sustained an objection to Defendant's Exhibit 11, the affidavit furnished to the agents by Mr. Miller on March 5, 1952, on the grounds that Miller's testimony constituted the best evidence as to payments made by him and that no foundation had been laid for its use as impeachment evidence.

The court also sustained an objection, predicated on the fact that they were not impeaching, to Defendant's Exhibits 17 and 18, Sobieraj's affidavit of October 16, 1951 and his testimony before the Grand Jury, respectively, on the grounds that they were not impeaching since he had testified that the statements in the affidavit were false and nothing was shown as to the falsity or inconsistency between his grand jury testimony and his testimony in this cause.

Thereupon, the defendant moved for the production of the affidavits or statements of Brandt and Kusper, given to the government on about the same date as that of Sobieraj, October 16, 1951. The government's refusal on grounds of materiality was sustained, and the following colloquy ensued:

812 "By Mr. Struett: I would like to have them marked and produced, so I can have them as part of the record, your Honor.

By the Court: I don't see on what theory.

813 By Mr. Struett: All right.

By the Court: I might ask counsellor to take out his pocketbook.

By Mr. Struett: Now, if your Honor please, I would like to have the Government produce the Grand Jury testimony of the defendants Brandt and Kusper before the Grand Jury on or about the same date that Mr. Sobieraj appeared, and have it marked as a defendant's exhibit and get a ruling on its admissibility.

814 By the Court: What is your theory?

By Mr. Struett: I think this is all part of this theory, your Honor, that these men all went before this jury and denied this matter. They denied it to the agents. I think I am entitled to all of the evidence.

By the Court: You have not attempted to prove it. That is the trouble.

By Mr. Struett: It is in there part ways, Judge.

By the Court: No. Do you object to it?

By Mr. Manion: Yes, we do, your Honor.

By the Court: Objection sustained."

821-822 Thereafter, considerable colloquy ensued concerning the submission of the indictment and plea of guilty as to Sobieraj to the jury, the court ruling that, on motion of the defendant, the entire indictment could go to the jury and that the defendant would be permitted to argue the plea of guilty. The court likewise admitted Defendant's Exhibits 34 through 42, Marzec's original records kept during the process of receiving the commissions.

Thereafter, defendant offered Government's Exhibits 41 and 42, renumbered as Defendant's Exhibits 45 and 46, the statements prepared by the defendant. The Government's objection of incompetency, based on the fact that they were prepared subsequent to the events and payments recited therein was sustained and the following transpired:

823 "By Mr. Struett: Your Honor, he gave them to the United States Attorney.

By the Court: His testimony on his cross-examination showed he manufactured them after the event.

By Mr. Struett: Certainly he did.

By the Court: Objection sustained."

824 Thereafter, counsel for the defendant moved to strike the questions of the United States Attorney of the witness Marzec as to the questions asked and answers made by Marzec before the Grand Jury on March 11, 1955 from the record on the grounds that the defendant was denied the opportunity to put in the rest of the grand jury testimony. Thereupon the following occurred:

825 "By the Court: You were given the opportunity to
826 ask him about what he said before the Grand Jury, and counsel for the Government particularly called your attention to that fact.

Then later you offered the rest of the transcript, and the Court examined the whole transcript and found that what you were now offering bore no relation to the subject matter covered by the questions and answers by Government's counsel, and denied your offer, and adheres to that ruling.

By Mr. Struett: If your Honor please, if I may clear that up.

By the Court: You don't need to clear that up. That is clear.

* * * * *

826–830 Thereafter, the admissibility of defendant's exhibits 45 and 46 was reargued and the Court adhered to its original ruling. Thereafter, the government withdrew its objections to defendant's Exhibit 17, which was accordingly admitted. Then the court sustained a general objection to Defendant's Exhibits 19 and 20, the statements which Marzec delivered to the United States Attorney's office. Thereupon, counsel for the defendant stated that in the light of the ruling on this exhibit there was no use in bringing the jury back. He would make an offer of proof with Mr. Hauptman, his accountant.

831-832 JOSEPH T. MARZEC resumed the stand and testified as follows on his own behalf:

Redirect Examination.

Defendant's Exhibit 45 the check for $450.00 is in the black book as distinguished from the check for $450.00 which is not. At the left hand corner it bears the notation, "North Shore and Lakewood". The witness made that notation when he had the black book to examine it. It represents a building that a loan was made upon.

832-6 *Recross Examination.*

The black book the witness referred to is Government's Exhibit 33. The check, defendant's Exhibit 43 for identification, appears in the book. The amount shown in the black book is $450.00 and the amount shown in Defendant's Exhibit 43 is $450.00. The entry "North Shore and Lakewood" did not appear upon Defendant's Exhibit 43 until the witness placed it there the preceding Saturday, to distinguish it from the other $450.00 check. The other check, Defendant's Exhibit 31, was distinguishable from Defendant's Exhibit 43 by check stubs. You could not tell from the checks themselves.

DOROTHY E. SIPIORA, being first duly sworn, testified on behalf of the defendant:

836–841 *Direct Examination.*

The witness testified that she was subpoenaed by the government and was afterwards called and told not to come down by a Mr. Kabaker. She worked as secretary to Stanley T. Kusper at the Polish Roman Catholic Union for a period of six and one half years from May of 1948

until December 23, 1954. Her duties included the preparation of mortgage documents, closing statements, processing loans and similar activities. She knew what brokers made loans with the Union, among whom were Miller Sheldon, Banach, and Kazzor. (On objection of counsel for the Government, she was not permitted to testify as to whether she had conversation with these brokers as to their payment of commissions to Marzec.)

Defendant's Exhibit 22 was her signed statement comprising forty-five pages and dated December 29, 1954. It was prepared in attorney Rieger's office upon interrogation by Mr. Struett. She was interrogated from this statement in the United States Attorney's office before she went in to the Grand Jury, and believed she saw the statement on the desk when she was before the Grand Jury. On or about October 19, 1955, she was interrogated by Special Agent Worcester and gave him an affidavit (Defendant's Exhibit 51). Thereupon, Exhibits 22 and 51 were offered and counsel for the Government objected on the grounds that it was not clear for what purpose they were being offered. Thereafter the following colloquy occurred:

840-1 "By Mr. Struett: He (Worcester) testified in substance that he had examined the books of this man and could find no evidence that Kusper got these commissions.

By Mr. Manion: He did not say that at all, Mr. Struett.

By Mr. Struett: That is my version of it.

By Mr. Manion: We have the verbatim transcript.

By the Court: I don't see on what theory you are presenting these.

By Mr. Struett: It shows they had evidence that Kusper got the commissions. The girl gave evidence against Kusper.

By the Court: Objection sustained."

Cross Examination.

841–2 The witness testified that when Mr. Kabaker called her, he told her that he would advise her when she should appear. The witness knew that there was another defendant under indictment in this cause.

HERBERT M. HAUPTMAN, being first duly sworn, testified on behalf of the defendant:

843–56 *Direct Examination.*

The witness testified that he was an attorney for approximately 20 years and a Certified Public Accountant for approximately four years. He was employed by Marzec on October 23, 1953. He had a series of conferences starting on that day. He checked books, records and other information that he had pertaining to Marzec's known visible assets. He reviewed the transcript of information that Marzec submitted showing a list of loans made by the Union in regard to which Marzec became the recipient of certain monies. He and Marzec were preparing information to be presented to the government and to whatever governmental bodies might have been interested in the division of the monies which Marzec received and the fashion in which it was distributed. He had Marzec prepare a series of documents based on the records that he had, both original and supplemental, from which Hauptman prepared a statement of net worth, taking into consideration such known assets as were available, income tax returns for the years 1946 through 1952. He had been instructed by Messrs. Struett and Rieger to prepare such information and have it available.

On August 31, 1955, Rieger, Marzec and the witness went to the office of Assistant United States Attorney Reeb. Agents Freiberger and Worcester were also present. The

witness brought along all the information that he had pertaining to Marzec. He told them at that time that he had the net worth statements, checks, bank statements, and a series of statements prepared by Marzec under his instructions pertaining to Marzec's receipt of monies and their distribution. He told Reeb that Reeb was entitled to any of this information he desired. Reeb stated that they desired certain checks, but they did not need them all. Then they went through a series of checks covering a two year or longer period. Certain checks were extracted to be photostated. Reeb also took the analysis (Defendant's Exhibits 45 and 46) that was prepared by Marzec at Hauptman's direction, had photostatic copies made, and returned the original.

The witness had a discussion with those present as to how this was prepared and how it was related to a net worth statement. Then the following occurred:

"By Mr. Manion: I think I will object to this testifying to conversation. If Mr. Hauptman is attempting to lay a foundation for the admissibility of these documents, we have no objection to that, but it is improper for him to lay the foundation by what he said and what somebody else said to him in the office of the United States Attorney. I don't think the foundation of these documents can be laid in that fashion."

* * * * *

(Thereupon the jury was excused, and the following proceedings transpired.)

"By the Court: What do you expect to show from this?

By Mr. Struett: I expect to show this, Judge, that he told—

By the Court: That "he"—who?

By Mr. Struett: Mr. Hauptman—that Mr. Hauptman went over there with his information to make it available to them. He told them how he had prepared these docu-

ments, Defendant's Exhibits 45 and 46, that in addition thereto, they were in substance supported by a net worth statement which he had prepared, which he had, and whatever documents they wanted, the Government could have, and then they asked for these and the checks and that is the last you heard from him. That, I think is perfectly competent evidence.

850 By Mr. Manion: We don't think it is material.

By the Court: For what?

By Mr. Struett: To prove the admissibility of these documents, your Honor.

851 By the Court: I don't see it.

By Mr. Struett: I certainly do. I mean, they were called to the attention of the United States Attorney.

By the Court: He might call the attention of the United States Attorney to anything, it doesn't make it admissible in evidence in a lawsuit. Here are some papers the gentleman prepared. We don't know what he prepared. He said he prepared them from records. We don't know what records he prepared a net worth statement from. We don't know where he got his basis to start on his net worth.

By Mr. Struett: I will go into that if they want to. I would just as soon do that.

By the Court: I don't see that you have started it. Better go ahead, examine this witness outside of the jury until I see where you get. Make your objections right along."

* * * * *

The witness prepared a net worth statement which he had with him. He had it since approximately the latter part of 1953 or the early part of 1954. He was asked to prepare it by Mr. Rieger and Mr. Struett and had access to Marzec's records. His records included the property records, bank records, bank statements, income tax returns for the years 1946 through 1952 and some prior years. In

addition, the witness had information from Mr. Marzec directly. The witness attempted to reconcile Government's Exhibits 41 and 42 with the net worth statement which the witness had prepared. The witness then described the manner in which he attempted to reconcile the statements and concluded that he "really tried to make certain that the figures that Mr. Marzec had prepared here could be substantiated by way of a net worth statement." He then took his documents to the U. S. Attorney's office as he had indicated.

856–879 *Cross Examination.*

The witness stated that the records from which he prepared the net worth statement were not derived solely from Mr. Marzec. The majority of the information came from documentary evidence such as real estate files, bank statements and other data which the witness had with him. The witness stated that he was able to substantiate Mr. Marzec's representation as to total retained income as shown in Governments Exhibits 41 and 42. It was impossible to allocate it for any given year. (After detailed inquiry as to the corrected operating statement for commission income for the years 1949 and 1950, counsel for the government stated he had no objection to the witnesses testimony as to what the net taxable income was but objected to the foundation for the documents produced by the witness.)

Under questioning by the court, the witness described the method by which he made up the net worth statement. He took the tax returns to arrive at what properties were recorded or reported. In addition to that he took the property files turned over by Mr. Marzec and traced them from the purchase date down through the disposition date. He plotted each property from the beginning of the period, showing its original cost, the length of time it was retained

and the sales price if it was disposed of. The period happened to begin with 1946. The witness assumed that the defendant was worth approximately $8,000.00 at the start of the period on the basis of the properties that he held at that time, from property records and income taxes. With respect to property which the defendant did not have, stated that he knew the defendant did not have it because there was no information or evidence in any of the tax returns or in the defendant's statements to indicate that the defendant had the property. Thereupon, the court further examined the witness who stated that to get a basis for a net worth statement it was necessary to rely on either Marzec's statements or his tax returns. However, even if there were unknown assets at the beginning of the period, it would be immaterial since if not included it would have no effect on the net worth statement. The witness checked bank statements and checks to see that there were no large items of expenditure during the period. The witness stated that the significance which he attached to a net worth statement was that if the combination of the net worth statement and the earnings statement tie in together there is an assumption that the net worth statement is correct.

(Thereafter a colloquy occurred between counsel and the court concerning the admissibility of this document during which the Government objected on the ground that it was self serving, once removed, since it was predicated upon information furnished by the taxpayer.)

In response to further cross-examination by government counsel, the witness stated that the net worth of an individual is going to be directly derived from information furnished by the taxpayer. You substantiate that with documents showing costs of property, sales price of property, and other information of that kind. There is no other basis. The property records which the witness con-

sidered showed that Mr. Marzec held properties in combined interest with others in the Cosmopolitan National Bank and other trust companies. The witness did not inquire from representatives of those companies as to whether he had been advised of all of the land trusts by Mr. Marzec. He did not check with those to which Mr. Marzec did not direct him. He questioned Marzec as to his living expenses and tried to build up what his living expenses would be from the witnesses viewpoint. He did not check the stores where the defendant did business, where he spent vacations and things of that sort because the witness believed he gave enough leeway there. The witness did not talk to any possible donees of gifts. The witness testified that he was using net worth as corallary information. The witness stated that substantially what he was saying was that the net worth statement shows that for two years. 1949 and 1950, Marzec received approximately the sums represented as retained by him in Government's Exhibits 41 and 42. He was unable to tell what Marzec did with the balance of the commission paid to him during those two years.

Thereupon an objection to that line of testimony and to Defendant's Exhibits 45 and 46 was sustained.

ROBERT KLENHA, being first duly sworn, testified on behalf of the government in rebuttal:

Direct Examination.

881-6 The witness had been a special agent in the Intelligence Division of the Internal Revenue Service since 1945. He was present in a conference on November 8, 1954 in the office of the United States Attorney with Messrs. Struett, Rieger, Marzec, Freiberger, Wolfe and Reeb. He had met Mr. Struett early in the morning with his client and Mr. Rieger in the reception room of the United States Attorney's office, and discovered that they were there for

the purpose of having a conference with Mr. Tobin. The latter being ill, Mr. Reeb was assigned to sit in on the conference and the witness arranged for representatives of the Bureau to be present.

Defendant's Exhibits 19 and 20 were produced at the conference, but they were not all the documents. Others included Defendant's Exhibits 34 to 42. Mr. Struett offered these things with the representation that these documents would establish that Marzec had paid out a considerable portion of the funds that he was alleged to have received from others. This witness was particularly concerned about Defendant's Exhibits 34 to 42, inclusive, and the implications of the tender caused him to tell Messrs. Struett and Marzec that he could not accept any of these things on behalf of the Revenue Service with any conditions or any strings attached to it, and that he did not accept them as absolving Marzec of any responsibility or liability. The witness offered to accept them for what they were worth, but again with the exception that he would not be bound in any manner by way of immunity or extending a reward to Marzec. He repeated himself a number of times, emphasizing that he could not accept these documents with any strings attached. Mr. Struett kept tendering them to him and the witness kept handing them back. It was cause for comment later on, the way "we handed those instruments back and forth between Mr. Struett and myself.

887-889 *Cross-Examination.*

The witness stated that it was possible that there were a lot of exhibits there besides the particular documents mentioned on direct examination, and basically at that time the witness did not want to take them. This was not his case, and the statements were given to Mr. Reeb rather than to him.

FRANK WILLIAM REEB, being first duly sworn, testified on behalf of the Government in rebuttal:

889-91 *Direct Examination.*

The witness testified that he was an attorney associated with the Chicago firm of Bell, Boyd, Marshall and Lloyd. Prior to that time he had been an assistant United States Attorney. On November 8, 1954 he received Defendant's Exhibits 19 and 20 in the course of his duties as an assistant United States Attorney from Mr. Struett or Mr. Rieger at a conference in the United States Attorney's office. Mr. Marzec, Mr. Klenha, Mr. Wolfe, and Mr. Freiberger were also present. At the time he received these documents, he said, "We are willing to take the statements, but that in connection with taking them I would make only one promise, and that was that I would read them. And I stated at that conference, that, at the conclusion of the conference, that I made no promise other than that it would be read." (sic.)

Cross-Examination.

891–892 The witness was not permitted to answer a question as to whether or not if it had not been for those documents and the information given him by the defendant he would not have had a case against the other two defendants.

Which constituted all of the evidence heard in the above-captioned cause.

* * * * *

894 By Mr. Struett: My first motion, your Honor, is to renew my motion for withdrawal of a juror and declaring a mistrial, which was filed on February 11, 1957.

I would like to renew that motion.

By the Court: Do you wish to say anything further about it?

By Mr. Struett: I have argued it before. I think, your Honor, that I am going to depart from it for a couple of minutes here, and I can come back to it, if I want to.

Now my second motion is to strike the testimony of Mr. Sobieraj in that it was false and that it was not adequate, that adequate opportunity wasn't given to cross-examine.

Now my third motion is to strike from the record Defendant's Exhibit 33, which is the black book.

My fourth motion—

By the Court: Just a minute. Your first motion is to withdraw a juror.

The second is to what?

895 By Mr. Struett: To strike the testimony of Mr. Sobieraj in that it was false and it has no probative value in the light of what I am going to say now.

By the Court: Yes.

By Mr. Struett: The third motion is to strike from the record the little black book that he produced, Government's Exhibit 33, is that right?

By Mr. Manion: That is correct.

By Mr. Struett: My fourth motion is to strike the testimony of Mr. Worcester,—is that his name?

By Mr. Manion: Worcester.

By Mr. Struett: Worcester, on the grounds that it was arbitrary, capricious, senseless, irresponsible and indefensible in the light of the facts in this case.

My motion then—

By the Court: Well, wait a minute. Mr. Worcester?

By Mr. Struett: Mr. Worcester, that was the man that prepared the summaries and gave the technical evi-

896 dence about the allowance and disallowance to Marzec for these payments.

By Mr. Manion: That is correct, your Honor. Mr. Worcester testified as to the summaries prepared by him from the evidence in the case and also testified as to unreported deductions as established therefrom.

By Mr. Struett: Then my motion is to strike all of the exhibits of said Worcester on the grounds they are based upon his testimony as aforesaid for the reason that at the time of their introduction in evidence ample opportunity was not given for cross-examination and that these exhibits themselves were speculative, arbitrary, capricious; and for the further reason that there was not in the record sufficient evidence to justify some of his computations and that other evidence in the record showed that his other computations were false.

I have got to have my motion to produce, and then
897 I make a motion for a directed verdict.

Now, if your Honor please, your Honor was kind enough to hear me on this book of Mr. Sobieraj the other day. True, he said it was a partnership book. But if you will notice, it ends 1952 when his mother-in-law dies.

Now that is in the record now, she died early in 1952.

In addition thereto, there is in the record evidence that it does not contain all the commissions paid by Mr. Marzec to Mr. Sobieraj.

898 And as I fully developed to you yesterday, while I may have said it is a partnership, the very entries indicate that she carried out to the right hand side only her share, and it is her personal book.

Now, insofar as that book, my position is that under this record, that book cannot remain here under any circumstances, with the greater deference to this court, and in turn, Mr. Worcester's testimony for the refusal to allow Mr. Marzec other than the amount admitted by Mr. Sobieraj, he bases it on his black book.

I certainly testified to that one place because I saw it the other night, and it doesn't furnish a basis for any of his administrative action.

Now, when you get to his other testimony, he says—and pardon me a minute here—he says, and I am going to get that testimony now.

By Mr. Manion: It begins at page 486.

899 By Mr. Struett: All right. Basically, I think I can say to your Honor that he prepared—have you got a copy of it?

They are in evidence, just so I can show what I mean. I may put this backward, and I may put it forward, and I don't want to do it deliberately.

Mr. Manion: Here are the documents in evidence.

By Mr. Struett: All right. What he first did was to compute the total amount of the commissions, isn't that right, for 1949 and 1950?

By Mr. Manion: As testified to by the witness and shown by the exhibits.

By Mr. Struett: And there is no question about that, and that gives certain credits against that. For instance, he shows Stanley T. Kusper, $2,175.00 giving Marzec no credit for any cash at all.

He gives Sobieraj $7,848.33, which is the amount shown in the black book.

Then he gives Frank Brandt—and I think the rec-
900 ord shows that Brandt's figures and our figures are approximately correct. In other words, you couldn't verify it any other way, and they are naturally the same, so we don't bother about Brandt.

By Mr. Manion: Well, let's have the record clear, though, Mr. Struett, as to Bruno Sobieraj.

Mr. Worcester also included in his total figures unrecorded checks, which are included in the checks identified by Mr. Marzec.

By Mr. Struett: There is no question about that. Those unidentified checks were for the purpose of showing—

By Mr. Manion: That the record wasn't complete.

By Mr. Struett: That the black book wasn't complete.

By Mr. Manion: The exhibit is here.

By Mr. Struett: I will take your word for it.

"Mr. Worcester, have you been able to determine
901 or verify any deductions or expenses or commissions paid by the defendant, Joseph Marzec, for the calendar years 1949 and 1950 in the course of your investigation?

"A. Yes, I have.

"Q. To whom and to what extent, if any, sir?

"A. With respect to commissions paid to Bruno Sobieraj, I took his book, made a list of monies that he said he received from Mr. Marzec. There were also checks that he received. Some of the receipts by Bruno Sobieraj were cash, some were in the form of checks, and I listed those."

Then he goes and tells about Brandt—as to Kusper:

"Now, Mr. Worcester, did you make efforts to determine whether or not the Defendant, Joseph Marzec, is entitled to deductions for commissions paid to Stanley Kusper in excess of the deduction for commissions paid as stated in the tax returns for the years 1949 and 1950,
902 being Government's Exhibits 1 and 2 in evidence?

"A. I examined the books and records of Mr. Kusper for the years 1949 and 1950. His records reflected the checks issued by Mr. Marzec to Mr. Kusper and Mr. Repsuk. I did not find any additional income due Mr. Kusper from Mr. Marzec.

"Q. In other words, you did not find additional deductions unreported or deductions to which Mr. Marzec would be entitled, is that correct?

"A. That is correct."

Now here is my thought on this, your Honor. Maybe I am wrong on it. Maybe I am not.

I think that where an expert, or we will call him an agent, gets into a case, he has got to recognize the evidence of the case rather than to make an arbitrary determination.

903 Basically here, your Honor, he states he went to the books of Kusper, and he found these books.

Obviously he didn't find the cash. There is evidence in this record that Marzec did pay him cash, and when he prepared computations, he must give credit to it. He just can't ignore it.

In other words, my whole theory of this case, your Honor, and we have had a little argument about it, is that when they indict this man Kusper, when they do these things, they concede that there is in effect additional income by way of these cash proceeds or cash commissions.

That is just my view of it, and I say to you that therefore his whole computations are capricious, as they use the term in tax law, where you say an assessment is arbitary and capricious.

He just can't come in here and say this man had no—well, they talk about the Bender and the Horwitz case.

904 I went through the cases very fully before I cleared it, your Honor, the Horwitz case, and that is a different kind of case entirely.

They have evidence here—maybe it is not the best. I am not saying it is the best, your Honor, but surely action of a Grand Jury, by the United States Attorney indicting Kusper here, would preclude the United States Attorney in this case from coming in here and saying that Kusper got none of this cash.

It just doesn't make sense to me. I am honest with you and you get into the question of proof, your Honor, and you prove that Kusper got these commissions.

Supposing we were trying Kusper? We would have to have the direct evidence of Marzec.

Now, Marzec's word alone is no good. Let's say that is basic. Under our law you can use the accomplice, as I understand it, in our Federal Court, but basically to make a case, you have to have corroborative evidence.

They have had that corroborative evidence in their
905 files for a long period of time. They come in here and
put me to a defense on the theory I have to prove really the case against Kusper.

Now, if Worcester's figures fall, Mr. Ruggaber's figures fall, because he is the expert who testified from Worcester's figures.

I assume that is correct, isn't it?

By Mr. Manion: It is correct in part, but Mr. Ruggaber also testified he was present in the court room during the course of the trial, and he did take the evidence into consideration.

By Mr. Struett: Basically, his figures, as far as the figures that I am talking about, I looked at it last night, and they do fit into Worcester's testimony.

By Mr. Manion: You are talking about deductions?

By Mr. Struett: That is right.

By Mr. Manion: There is no question about that, as to Kusper's anyhow, and as to Mr. Brandt.

By Mr. Struett: We refer back to my motion to
906 withdraw a juror. I think I substantiated a great deal
of that motion relative to Sobieraj's testimony when I offered in evidence the checks, and I offered in—and the evidence shows when this mother died, the evidence shows it stops right there. That is very damaging evidence to my client, your Honor.

Your Honor says "he testified it is a partnership book." True. Ordinarily, your Honor, it is right.

By the Court: It is not surprising to you that a partnership ends when one of the partners dies, is it?

By Mr. Struett: No, it isn't, your Honor. That is true, perfectly true, but I mean you look at the book—you say—well, it isn't a question of its competency, but it is a question of its materiality.

However, your Honor, we get back into my predicament

on these Government's Exhibits 46 and 45, which are these documents, these carry-overs of the income, and I think
907 that is more a question of its weight rather than its competency, but I don't think that Sobieraj book should have gone in evidence, and I make these motions.

908 There is one other proposition I have here, Judge, and I want to argue it to you. I want to argue it very seriously and very, very briefly.

There isn't any question in this case, your Honor, that this man omitted income. You just can't escape it. I didn't claim he didn't.

There isn't any question in this case that this man was responsible for the making of the case against these other people. I don't think the Government will deny it. They can't deny it.

In addition to that, your Honor, this man had no representation.

Now, whether it is his lawyer, whether they hired one for him, you and I may disagree on, but the testimony of the agents is practically conclusive that all these lawyers did was say, "He won't tell us nothing. He won't cooperate. We would like to get out of the case." And the other lawyer says over at Mr. King's office, "If you signed those
909. checks, you ought to go to the penitentiary."

That is pretty rough treatment for any American citizen to have representation like that, and he has done here what a citizen—maybe he was wrong in the first place—should have done.

I think he has given the Government something, and I think he is entitled to the benefit of it.

As far as I am concerned, in my judgment, and I have been wrong so many times that it isn't even funny, that this man put in this situation this over-all fact, that this prosecution is just so repulsive to doing a proper admini-

stration of justice it can't stand, and I say it to you in all sincerity.

Let's take what they said this morning, that Mr. Reeb said that it would be the death warrant of my man. I am not exactly giving a death warrant to a client, but let's take them at their face value.

They used him. They got the benefit of him, and now they want to prosecute him.

910 I don't think our Government is run that way. Maybe it is, but I have never heard it before, and I think it is a question that I could give to you in the Morgan case where they said when these administrative officers have the great powers they have, that they should conduct themselves according to the basic premises of fair play.

You heard the testimony. They talked to us about specific questions he is going to give. The questions he gave, Judge, as you can see from that transcript, were to pin the amount of money to these other people.

He gave them their case, and he gave it to them honestly and conscientiously.

It just doesn't seem to me that it is the kind of case that the courts should have.

Now that he is guilty, there isn't any question about it in a sense. She certainly cheated under his taxes. They had him under wraps, and they held him under wraps,

911 and all the time they held him under wraps, Judge, they were going around and knifing him.

912 Mr. Osheroff testified that Wilson called him up the day after he had examined the books. Wilson testified that he was hired the latter part of 1950.

Mr. Marzec testified, and apparently this man had a lawyer before he ever knew an accountant. You can take that whole situation and follow it through, and you will see that they gave him no representation.

There is another thing in this case. There wasn't an

investigation as we know it. Your Honor tried the Johnson case, the Paschen case, and in my conception of investigation, that is that you go out and get the true story of this situation.

These gentlemen, with due deference to them, they picked up the commissions—they unquestionably had it—and as Mr. Wolfe said when he had that conference on April the 11th, he says, "We were ready to send it forward to Justice."

All they had to do to the man was to say, "Get yourself a lawyer. Here is what we have, and we are going
913 to indict you alone," and they would have had this whole story.

It is a funny case. It is an interesting case, and I feel very strongly on it, Judge, and I make these motions. You may rush me a little bit, but I have done the best I could, but I would like to make these motions, and I make them in good faith, and I think they are sound basically.

I don't think an agent in a case has the right to come in here and disallow anything where he knows otherwise, and that is the difference, as I look at it, from the Horwitz and the Bender cases and those cases.

The job of the Government is to get at the facts, not to load people with taxes, and I can't say any more, Judge, now, and I thank you for your time.

By the Court: On these motions, the questions presented by these motions have all been presented and considered before, except the motion for a directed verdict.

They were thoroughly considered at the time they
914 were presented, and I have considered what you have said today, and I don't see any reason for changing my view about the matter, and accordingly the motions will be each and all denied.

* * * * *

By the Court: Now, what is this about putting the case over until tomorrow? This case will never end.

By Mr. Struett: I appreciate that. I have been over your instructions, they are fair. There isn't any question about it. I have no objection to them, they are all proper, so forth and so on.

Now the Government submitted certain instructions here.

By the Court: February 13th.

By Mr. Struett: Is this February 13th?

By the Court: This is the 13th.

By Mr. Struett: Some of them are included in your instructions. I have gone through it hurriedly.

By Mr. Manion: We will withdraw Government's tendered instruction No. 1, your Honor, at this time.

By Mr. Struett: Let's try to get these in order here. I will give the Court my thoughts on it.

You withdraw No. 1?

By Mr. Manion: Yes.

By Mr. Struett: No. 2 is what?

(Whereupon Mr. Struett read Instruction No. 2.)

By Mr. Struett: I don't think that is applicable in this case. That is the Hornstein case, Judge. I think the
920 question in this case is primarily what the evidence shows, and of course I don't like that in there.

Your Honor's instructions are stock instructions, I have no objection, of course. However, it says:

"You should properly consider any—"

By the Court: No. 2 looks to me all right. I don't like this Government's Instruction No. 3. I want you to take that off.

By Mr. Struett: I don't either.

By the Court: Where does your rule say you can put the number? The rule tells you how to do it. What does the rule say (addressing the Clerk)?

You have withdrawn No. 1. I hand it back to you, Mr. Manion.

By Mr. Manion: I have withdrawn No. 1, yes, your Honor.

By the Court: No. 2 I will give. You still insist on it in spite of Mr. Struett's objection?

By Mr. Manion: Yes.

By the Court: I will give that.

921 What does the rule say about that (addressing the Clerk)?

By Mr. Struett: I want to make a specific objection to No. 2.

By the Court: Yes.

By Mr. Struett: (Reading Instruction No. 2.) Now I take a different view of this case. I take the view the Government here in this case is required to barely and forthrightly present the true picture as to this man's tax liability by way of deductions or otherwise, and the instruction that they do not have to do so is not proper under the evidence in this case.

By the Court: Well, I don't think so. I think this is proper. If the Government were sure, why, certainly, they ought to tell us so. If they are not sure—if they are sure, I would be surprised.

What does the rule say about it (addressing the Clerk)?

By the Clerk: (Reading): "The requested instruction on behalf of a plaintiff shall be numbered consecutively from No. 1 up in the lower lefthand corner."

By the Court: Lower lefthand corner, just put
922 a "2" down here on the Government's instructions or any other, just a small "2".

Now what about No. 3?

923 By Mr. Struett: I tore that up, your Honor. I thought you said you didn't like it. I just tore it up.

By the Court: I was just talking about the numbers down there.

By Mr. Struett: I see. I beg your pardon.

By the Court: (Reading Instruction No. 3.)

What do you say about that?

By Mr. Struett: I think, your Honor, it is that the amended return may be evidence also of a man's good intent just as much as it is the other. I think the patent point of justice to that one matter, as I understand it, this substantially represents the law. I think that is true, isn't it, Mr. Manion? I think this case is on that.

By Mr. Manion: That is correct, Mr. Struett.

Mr. Struett: I am dealing here with the case we have here.

If your Honor thinks it should be given, I don't have too much objection to it.

By the Court: I don't think it should be given. You will have to change that. Just put a small "3" down there at the bottom.

924 By Mr. Struett: What is your No. 4?

By the Court: (Reading of Government's Instruction No. 4.)

What about that?

By Mr. Struett: I don't think that is right, your Honor.

By the Court: What is wrong with it?

By Mr. Struett: I mean, I think what it does here, your Honor, is it pinpoints—

By the Court: Well, after all, we have talked just about the solar system here. We ought to bring the jury down to earth as to what the question is.

I think I will give 4.

Now No. 5.

By Mr. Struett: Well, I object to that on this ground, your Honor:

(Reading of Government's Instruction No. 5.)

Now that is pinpointing particular evidence and I don't think that is proper, your Honor. If you are going to dis-

cuss the evidence, I don't think you should pinpoint in your instructions particular evidence.

My main objection to that is that last particularly,
925 "you may consider—".

Other than that, that is certainly the law. I mean to settle on particular things to point out, I don't think that is proper.

By the Court: What do you say about that, Mr. Manion?

By Mr. Manion: Well, this instruction has been given and approved before, your Honor, in the Indian Trailer case.

By the Court: What?

By Mr. Manion: It was given in the Indian Trailer cases by Judge Hoffman, it was given by Judge Campbell in the Irving case.

I was looking for the citation of authority for this particular instruction. I have not been able to put my hand on it.

By Mr. Struett: You have got authority for every instruction, but it depends upon what your facts are.

Now that is my objection to it.

By Mr. Manion: Well, in view of Mr. Struett's objection, we will withdraw instruction No. 5, your Honor.

926 By the Court: Very well. Hand that to Mr. Manion. (Addressing clerk.) Now No. 6.

By Mr. Struett: My objection to that is it is pretty much the same thing, your Honor.

(Reading of Instruction No. 6 by Mr. Struett.)

By the Court: Well, I will refuse that. It doesn't do you any good—but I don't think I want to give it.

By Mr. Manion: That instruction is the Spies case instruction, Spies *vs.* United States 317,492.

By the Court: Well, I'm not going to give it.

The next one is this instruction No. 7.

By Mr. Struett: What is that, Mr. Manion?

By Mr. Manion: That is the instruction with regard to the witness Sobieraj.

By Mr. Struett: I don't care one way or the other on that, your Honor. I have no objection to it. Let's see.

927 (Reading of Instruction No. 7 by Mr. Struett.)

By Mr. Struett: Yet he may testify truthfully and he may testify falsely, too. I mean, I don't like these lefthanded one-way constructions.

By Mr. Manion: We will withdraw the instruction.

By Mr. Struett: All right, your Honor.

By Mr. Manion: It was prepared for your benefit, Mr. Struett.

By the Court: What did I say about No. 6? I would refuse that, didn't I?

By Mr. Manion: You said you would refuse that.

By Mr. Struett: Yes.

By the Court: Now No. 7. Hand it back (Addressing the clerk.)

By Mr. Manion: No. 7 was just withdrawn, your Honor.

By the Court: I am handing them back, No. 7.

By the Court: No. 8.

By Mr. Struett: (Reading Government's Instruction No. 8.)

928 We are right back where we were on that, your Honor. He testified he made an investigation outside of the record, and that isn't in the record. He has investigated, and that is one of my objections to his testimony, and then they say:

(Reading from instruction No. 8.)

Let me ask you something. I don't think this is the law, this second part. I think if they prepared summaries from the evidence, aren't those evidence in the case? That has always been my impression, Judge.

Supposing they prepare summaries from the evidence in the case, are those summaries evidence itself?

By Mr. Manion: No, they are not.

By Mr. Struett: Then I am learning something new. I always thought they were, Judge. I mean if you have an expert in here, he can prepare a summary from evidence in the case, and when you offer those summaries, aren't those evidence, or are they merely for the convenience?

If you are right on that—if that is the law, I have no objection to that.

By Mr. Manion: Do you want them to be considered
929 as evidence, Mr. Struett?

By Mr. Struett: No, I don't want them to be. I always thought they were. I am honest with you.

By the Court: I think you should put in "otherwise" in there.

By Mr. Struett: Where does he want to put it in?

By the Court: After "evidence" in the last line.

By Mr. Struett: As to the second part of this instruction with the word "otherwise" in it, I have no objection to it. I don't like that first part.

By the Court: What were the investigations?

By Mr. Manion: Agent Worcester testified, your Honor, that he examined Government's Exhibit 33, being the cash book of the Stanczewski partnership, that he interrogated Frank Brandt and investigated the records of Stanley Kusper and interrogated Stanley Kusper.

He testified that he had prepared the two schedules, 33-A and 33-B from 33 showing the total cash receipts admitted to by the co-defendant Sobieraj; that the defendant Brandt had admitted receiving the sum of $45,000.00 over a six or seven year period from the defendant Marzec but
930 he could not specify what the sums received in the two given calendar years were, so that on the basis of

the representations made to the Government by Marzec that he had received these certain stated figures or had paid the certain stated figures to Brandt in those two years, he was credited with those two figures for deduction purposes.

He testified as to the co-defendant Kusper, that Kusper's records coincided and matched the records of the defendant as to cash receipts by him from the defendant Marzec.

By Mr. Struett: And he denied—

By Mr. Manion: He denied receipt of any cash, and Agent Worcester was not able to find any other evidence of cash payments to Kusper or cash receipts by Kusper.

For that reason, he was not crediting the defendant Marzec with any funds paid to Kusper during the tax years other than is shown in the defendant's own tax returns.

By the Court: I am inclined to give this if the word "otherwise" is inserted after the word "evidence."

By Mr. Struett: It gives to the jury the results
931 of the investigation, which is not in evidence, other than the fact that an investigation be made, and I think it is erroneous, and I want to object to that instruction.

932 By Mr. Manion: Mr. Struett, you did not object to Mr. Worcester's testimony at the time he gave it.

By Mr. Struett: The record will have to show what I objected to. I appreciate that, Mr. Manion. Whether I did or didn't, you and I may disagree on that.

By the Court: What about No. 9?

By Mr. Struett: I don't think there is any question about that, is there?

By the Court: I will give No. 9.

By Mr. Struett: The instruction I have tendered is the instruction that was turned down, and the Supreme Court of the United States held it was properly turned down.

As I understand it, they have taken the Costello case

where they are going to pass on this question which might affect the denial of it.

By Mr. Manion: May I see a copy of that instruction?

By Mr. Struett: The Judge has all the copies. I have not had a chance to check that case for a long time.

933 By the Court: Well, when this indictment was returned, what year was it?

By Mr. Struett: 1955, Judge.

By Mr. Manion: 1955, your Honor.

By the Court: The Code of 1954 had become the law.

By Mr. Struett: I appreciate that, but I think, your Honor, it is my understanding—maybe I am wrong on it as I have not checked it, and I have not had a chance to check it, but I think this indictment is under the old Code.

By Mr. Manion: That is correct, the indictment is under the 1939 Internal Revenue Code.

By Mr. Struett: As I remember the case, they pointed out in the case there has been this change, but still this indictment is drawn under the old Code and I think that is the law, isn't it, that unless the statute specifically provides, then it is under the old Act?

By Mr. Manion: It is the Government's position, your Honor, that the 1939 Code would apply.

By the Court: The 1939 Code applies to the viola-
934 tion, but at the time of the indictment returned, the 1954 Code has modified that other statute.

By Mr. Struett: That is correct, your Honor.

By Mr. Manion: Yes.

By the Court: Where is that indictment? Well, it was refused, and it is not a question for the jury, anyhow, so I will mark this refused for you.

By Mr. Struett: There is only one other matter I wanted to call to your Honor's attention. I would like to have an instruction given here by the Court. It is unfair to come in and ask for something like this at this time, and I

should have had it—but consistent with the utterances of our Court of Appeals in the Phillips case as to this matter, if he had adequate counsel—

By the Court: You know that if you want to submit something to the Court, you ought to submit it. I don't want you to talk about—

By Mr. Struett: I know you don't. That is why I suggested we argue the case today, and I will have it in here tomorrow morning.

935 By the Court: What do you say?

By Mr. Manion: That is a matter entirely subject to the Court's discretion.

By Mr. Struett: I would like to argue it today and then will go back to the office and prepare the instruction after the argument.

By Mr. Manion: If the case is going to be continued for submission of further instructions by Mr. Struett, we would suggest the argument be held in abeyance. We would prefer to have the argument precede the instructions.

By the Court: Yes, that should be so. I don't think I will put this case over.

After your argument, I might put it over until tomorrow morning to instruct them, but I think the instructions should be in before you argue.

By Mr. Struett: My thoughts in mind now, your Honor, are only on that basic principle in the Phillips case about his intent and what advice he had, and there shouldn't be over two or three of them, but I think they are rather important in the light of the utterances of our Court of Appeals.

936 By the Court: I am not going to put this over to tomorrow morning for anything except instructions.

By Mr. Struett: I will argue it now. I am ready to argue it, as far as that is concerned.

By the Court: And I would prefer to instruct today.

937 By Mr. Manion: Mr. Struett, is the instruction you want to tender, an instruction as to his right or as to the advice of counsel?

By Mr. Struett: The advice of counsel and his relationship with his people. I think that is important in this case, very important; I mean what his position was in this joint venture—and I think he is entitled to an instruction on it.

By the Court: We adjourned here early yesterday afternoon, and we gave you last Thursday. You should have gotten this case ready for trial.

By Mr. Struett: I am merely stating my situation, your Honor. I can't do any more. I was working until 1:00 o'clock on my closing argument, and I went right home and started on it.

By Mr. Manion: The instruction which Mr. Struett would propose to give as to the advice of counsel, as we understand the law, would not be applicable in this case in any event, because such instruction is pertinent as to his intent at the time of filing or prior to the time of filing of the tax returns. Such evidence as has appeared in the record, if any, goes to the advice of counsel received substantially after the filing of the tax returns.

938 By Mr. Struett: Well, you asked this man whether or not he denied it right through. He was represented by counsel, and he said his counsel told him that is what he should do, that they would settle this case.

I think this man is entitled to that instruction. If he has any defense here, your Honor, it has to be based upon, in part, that.

By the Court: I told you last night, Mr. Struett, if you want to make any suggestions, to have your suggestions in writing this morning.

By Mr. Struett: I know you did, your Honor. I know that.

By the Court: And you request after your arguments are in that the case might go to tomorrow morning for instructions, and I might consider that.

By Mr. Struett: That is what I make.

By the Court: Now, then, you are just reserving in your mind that you are going to hand me some more instructions tomorrow morning.

By Mr. Struett: I will have them here tomorrow morning.

By the Court: That I will not let you do after the case is argued.

* * * * *

943 And Thereupon the Court Charged the Jury, as Follows:

By the Court: Ladies and Gentlemen of the Jury:

It is the duty of the court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

The instructions which the court will give you, in so far as they pertain to the principles of law applicable to this case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

The responsibility rests upon you to determine the facts of this case, under the law as the court may give it to you, uninfluenced by any expression of opinion that the court has made or may hereafter make upon matters of fact. The court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the court has expressed or does express any opinion on any matter of fact you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from
944 your own opinion.

This is a criminal case, and the law in such cases is that a defendant comes into court presumed to be innocent, and that presumption protects him until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendant is guilty as charged in the indictment or some count thereof.

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you must adopt the former.

The defendant on trial has pleaded not guilty. This puts the burden of proving the charges in the indictment upon the Government, and you cannot find the defendant guilty unless, from all the evidence you believe him guilty of the offenses charged in this indictment beyond a
945 reasonable doubt.

A reasonable doubt is what the term implies,—a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt.

You are the sole judges of the credibility and the weight which is to be given to the testimony of the witnesses who

have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testifies; his demeanor on the stand, the relation which
he bears to the Government or the defendant; the
946 manner in which he might be affected by the verdict;
the extent to which he is corroborated or contradicted by other credible evidence; and, in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness.

Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

During the trial of a lawsuit it often becomes the duty of counsel for the parties to object to questions, or to evidence, and I instruct you that you shall not take into consideration against such parties either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

The fact that an indictment has been returned is not evidence; nor is the indictment evidence; and neither the
indictment nor the return thereof should be consid-
947 ered by you as evidence in determining the guilt of
the defendant. The indictment is not to be treated by you as raising any kind of presumption or creating any kind of prejudice against the defendant. The indictment is simply the form or manner prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light.

The defendant has testified on the witness stand. You have heard his testimony. The fact that he is the defendant does not mean that he cannot tell the truth. You should

weigh his testimony by the same rules that you would weigh the testimony of any other witness. But you should keep in mind that he is the defendant in the case and, of course, has a vital interest in the outcome of this trial.

There are two kinds of evidence—direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, heard or otherwise observed some particular fact or occurrence.

948 Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example, if, when you went to bed at night, you saw the ground was bare of snow, and in the morning when you awakened you saw the ground covered with snow, while you had not seen the snow fall, nevertheless, you can infer from the evidence you see that it has snowed during the night. That is an illustration of what circumstantial evidence is.

If the facts and circumstances shown by the evidence in this case are sufficient to convince the jury of the guilt of the defendant, beyond a reasonable doubt, then such evidence is sufficient to authorize the jury to find the defendant guilty. The law demands a conviction where there is sufficient legal evidence to show a defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

A witness may be asked to assume something for the purpose of giving his conclusion based upon such assumption. This is called a hypothetical question, and is used in order to obtain the opinion of the witness for the

949 benefit of the jury. You are not bound to accept any such opinion merely because it has been given, but you are obliged to give it the weight to which you believe it is entitled from all the evidence. The jury need not accept any hypothesis or assumption as true unless it is

satisfied from the evidence that the same is true. When the witness in his testimony assumed that certain income was taxable income, and that, therefore, the defendant owed a certain tax thereon, he was allowed to do this merely to furnish the jury with the computation necessary, in case you believe from the evidence, beyond a reasonable doubt, that said income tax taxable income. If you have a reasonable doubt as to whether this was taxable income, then you are not obliged to accept as true the assumption of the witness.

The indictment in this case consists of eight counts. The charges against the defendant on trial, Joseph T. Marzec, are contained in Counts 7 and 8, and you are, therefore, to consider only Counts 7 and 8 of the indictment. Each of these two counts, 7 and 8, charges that the defend-
950 ant, Joseph T. Marzec, is guilty of a separate and distinct crime.

Count 7 of the indictment reads as follows:

"Count Seven.

"The February 1955 Grand Jury further charges: 'That on or about the 15th day of March, 1950, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1949 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America, for the calendar year 1944, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their joint net income for said calendar year was the

sum of $10,789.43, and that the amount of tax due and owing thereon was the sum of $1,397.64; whereas, as
951 he then and there well knew, he received during the said calendar year additional income consisting of his share of the proceeds from a joint venture conducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj, and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $19,830.78, upon which said net income there was owing to the United States of America an income tax of $3,658.16; in violation of 26 U. S. C., Section 145(b).' "

Count 8 of the indictment reads as follows:

"Count Eight.

"The February 1955 Grand Jury further charges: 'That on or about the 15th day of March, 1951, in the Northern District of Illinois, Eastern Division,

Joseph T. Marzec,

late of Chicago, Illinois, who during the calendar year 1950 was married, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of
952 America for the calendar year 1950, by filing and causing to be filed with the Collector of Internal Revenue for the First Internal Revenue Collection District of Illinois, at Chicago, Illinois, a false and fraudulent joint income tax return on behalf of himself and his said wife, wherein it was stated that their net income for said calendar year was the sum of $23,881.79, and that the amount of tax due and owing thereon was the sum of $5,077.72; whereas, as he then and there well knew, he received during the said calendar year additional income, consisting of his share of the proceeds from a joint venture con-

ducted by and between Frank A. Brandt, Stanley T. Kusper, Bruno L. Sobieraj and himself, and that the joint net income for himself and his wife for the said calendar year was, in fact, the sum of $65,593.67, upon which said net income there was owing to the United States of America an income tax of $25,423.86; in violation of 26 U. S. C., Section 145(b)."

Each of the above described counts charges a violation of a law of the United States which reads in part as follows:

"Any person who wilfully attempts in any manner
953 to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof" be punished.

Generally speaking, the indictment charges the defendant Marzec with wilful attempt to defeat and evade income taxes alleged to be due from him and his wife to the United States for the years 1949 and 1950.

The statute, you will observe, makes it a crime wilfully to attempt "in any manner" to evade or defeat any tax. Accordingly, there are various means that might be used in an attempt to evade or defeat a tax. The indictment here charges that the particular means were the filing of false income tax returns by the defendant for the years 1949 and 1950 in which the joint net income for himself and his wife was understated.

The word "attempt" as used in this statute involves two elements, First, a wilful intent to evade or defeat the tax, and, Second, some act done in furtherance of such intent.

954 The "attempt" contemplated by the statute must be a wilful attempt, that is, the attempt must be intentionally and designedly made and with a purpose to do wrong. Even though you should believe from the evidence that the

returns filed by the defendant Marzec were incorrect, if you further believe that the defendant acted in good faith in making such returns, then the defendant is not guilty of the offenses charged in the indictment. Nor would mere negligence or carelessness, unaccompanied by bad faith, render the defendant guilty. The word "attempt" contemplates that the defendant had knowledge and understanding that, during the respective calendar years 1949 and 1950 he had an income which was taxable and which he was required by law to report, and that he wilfully attempted to evade or defeat the tax thereon, or a portion thereof, by purposely failing to report all the income which he knew should have been reported in his return for those years.

955 In determining whether the defendant Marzec received a net income in excess of that reported in his income tax returns for the years in question you may consider all the facts and circumstances in evidence and view them in relation to each other.

As I have indicated, the question of intent is a matter for you, as jurors, to determine, and, as intent is a state of mind and it is not possible to look into a man's mind to see what goes on there, the only way you have of arriving at the intent of the defendant in this case is for you to take into consideration all of the facts and circumstances shown by the evidence, including the exhibits, and determine from all such facts and circumstances what his intent was at the times in question.

The offenses with which the defendant is charged involve two principal elements, namely, (1) Whether there was due from the defendant Marzec for the years named an income tax in an amount greater than that reported by him, and, if you are convinced that such was the case (2) Whether there was a wilful attempt by the defendant to evade and defeat any part of such taxes in the manner charged.

First, was there an income tax due in excess of the amount reported? If you answer that question in the affirmative, then the further question is, Was there a wilful attempt on the part of the defendant to evade and defeat any part of such tax by means of filing false returns?

The Government is not bound to prove the exact amounts of income charged in these counts to have been received by the defendant Marzec but it will be sufficient to sustain the allegations of these counts, so far as the amount of net income and the amount of taxes due thereon are concerned, if any amounts are shown which are in excess of the amounts reported by the defendant and which show a greater tax due from the defendant than those which are shown upon his returns.

In determining whether or not the defendant failed to correctly report his net taxable income for the years 1949 and 1950, or either of them, you should, of course, consider any evidence of unreported receipts by him during such year. The Government is not required as a part of its case to prove that the defendant did not have unreported expenses or deductions which might offset such unreported receipts, or the exact amount of such expenses if they may appear. However, you should properly consider any evidence of unreported expenses in determining whether the defendant did receive substantial sums of taxable income in excess of such income as reported in his tax returns. If you find from the evidence in the case that the defendant paid commissions to others in excess of the commission payments claimed in his income tax returns, you should, of course, deduct such additional payments from any unreported income received by him, in deciding whether or not he failed to correctly report his taxable income and the tax due.

The Government has introduced evidence which, if believed by you, would tend to prove that the defendant,

Marzec, filed an amended individual income tax return for himself and his wife for the calendar year 1950, in which amended return the net income for such defendant and his wife, and the tax due thereon, were stated to be substantially greater than the net income and tax as stated
958 in the purported original tax return filed by them for such year.

In considering whether the defendant, Marzec, did or did not correctly report his net income and tax for the calendar year 1950, you must determine that issue with regard to the time at which the original income tax return was filed and not as to the time at which the amended return was filed.

You may properly consider such evidence of the filing of an amended tax return for the calendar year 1950 in determining whether the original tax return correctly stated the net income and income tax due for such calendar year.

However, the filing of an amended return is not to be considered by you as evidence of an admission or concession of wilful evasion by the defendant, but only as to the issue of tax deficiency.

If you find that a fraudulent return was filed by the defendant for either 1949 or 1950, with the intent to defeat a part or all of the tax due for such year, and that this was done wilfully, the crime is complete for that year as soon as the filing takes place.

959 The Government through the witnesses Worcester and Ruggaber has offered testimony and exhibits concerning computations prepared by them from exhibits and testimony previously received in evidence, and from the investigation of Agent Worcester to determine unreported commission expenses paid by the defendant to others. The testimony of these witnesses concerning these computations, and the exhibits prepared by them, were offered

and are to be considered by you only as explanations by the witnesses as to what the evidence and the exhibits in the case show.

The testimony of the various witnesses and the exhibits received in evidence, other than the exhibits prepared by the witnesses Worcester and Ruggaber, are controlling. The testimony of the witnesses Worcester and Ruggaber, together with the schedules prepared by them, that is to say, Government's Exhibits 33a, 33b, 38a, 38b, 39 and 40, are to be considered by you merely as a matter of your convenience and are not to be considered as evidence otherwise in this case.

You are instructed that when a fact is stipulated to by counsel, no evidence need be introduced in order to
960 prove such fact, and that you are bound to find, in accordance with a stipulation, or agreement, as though the fact covered by it has in fact been proved by evidence. This applies to both oral and written stipulations.

You have only one duty to perform, and that duty is to tell the court whether or not this defendant is or is not guilty as charged in Counts 7 and 8. Under no circumstances need you consider the matter of punishment. That is a matter committed to the attention of the court alone.

* * * * *

236 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-CR.-679) * *

MOTION OF DEFENDANT JOSEPH T. MARZEC TO WITHDRAW A JUROR AND DECLARE A MISTRIAL.

(Filed Feb. 11, 1957. Roy H. Johnson, Clerk.)

Comes now the Defendant, Joseph T. Marzec, by Joseph A. Struett, his attorney, and moves this Court to withdraw a juror and declare a mistrial, and in support thereof, attaches hereto the Affidavit of Joseph A. Struett, his attorney.

Should the above motion be denied, this Defendant, Joseph T. Marzec, through his attorney as aforesaid, moves this Honorable Court that this case be adjourned for a period of ten (10) days to afford his counsel ample opportunity to adequately prepare his defense and to attempt to ascertain just what is going on behind the scenes in this case, and for such further and additional relief as this Court may deem proper. This latter motion is
237 not to be considered as a waiver of the first motion to withdraw a juror and declare a mistrial and should this second motion be denied, then said first motion is again repeated and renewed. All supported by the attached affidavit.

Joseph T. Marzec, *Defendant,*
By Joseph A. Struett, *his Attorney.*

Joseph A. Struett,
Attorney at Law,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665.

238 State of Illinois, } ss.
County of Cook. }

Affidavit.

JOSEPH A. STRUETT, being first duly sworn, on oath deposes and says:

Motion to Withdraw a Juror and Declare a Mistrial.

This Deponent, by the verified Motion for a Continuance presented to this Court on February 4, 1957, represented that he was not prepared for trial. The Government took the position that he had had ample opportunity to be prepared and seemingly the Court, in denying said Motion, took the same position. This Motion was denied at approximately 3:30 P.M. on February 4, 1957, and a jury was immediately called and its interrogation began. In denying this Motion, it would appear from the proceedings of January 23, 1957, and again from the proceedings on February 4, 1957, that this Court was largely influenced by the fact that this case was "old and must be disposed of immediately". Presuming, but certainly without conceding, that this Deponent had ample time to prepare for trial herein, as then urged by the Government, the fact still remained uncontroverted that this Deponent was not prepared for trial, and the fact still remained that
239 the Defendant Marzec under the Sixth Amendment of our Constitution was entitled to the benefit of counsel, which certainly should mean a counsel prepared for trial. With the greatest of deference to this Court, it would appear that he disregarded the Biblical admonition "the race is not to the swift, nor the battle to the strong * * *". (*United States* v. *Koplin*, 227 F. 2d 80.)

This Deponent has practiced law for thirty-five years

and never in any case, and he has tried many, has he filed a petition seeking a continuance because he was not prepared. Equally so, he has never gone into the trial of any case for a plaintiff or a defendant unless and until he was most fully prepared for trial since the client is entitled to such service and a client who is represented by an attorney who is unprepared must pay the penalty.

Since the commencement of this trial, the proceedings have continued from 10:00 to 12:30 in the morning and from 2:00 to 4:30 in the afternoon. This Deponent, to the best of his ability, has attempted to keep up with the evidence as it has been presented and at the same time has attempted to prepare for his defense. He has worked every day from 6:00 a.m. until 12:00 a.m. and has been continuously taking sleeping tablets to get even that much sleep. Despite such efforts on his part, he has just been unable to adequately keep abreast of the testimony as
240 it has been going in, keep his wits together, and prepare his defense. During all of said period of time, there was much pressure to keep going, to hurry the case up, and to get the evidence in. As a result of all of this, as of Thursday, February 7, 1957, this Deponent had just reached the point of physical and mental exhaustion. He undertook to make his situation most clear to this Court, with very little success.

This Court has tried many income tax cases and is fully aware of some of the many complications and problems therein, from a factual, legal and accounting standpoint. Equally so is this Deponent. In such cases much documentary evidence is usually offered, which of necessity must be verified and checked. A minimum of opportunity was given this Deponent to check such documentary evidence and much of it went in without this Deponent ever having an opportunity, even as of today, to check it, though the Government's case is now rested.

This Deponent, from 8:00 p.m. yesterday (Thursday), to 1:30 a.m. today, read the voluminous record already made in this case, comprising 532 pages, and most particularly read the testimony of the witness Sobieraj on direct and again on cross-examination. During the course of Mr. Sobieraj's examination, the Government introduced "our" black book as Government Exhibit 33, which the Government used against the Defendant Marzec. The very entries they rely on should appear conclusive that it was not "our" book but the book of the mother-in-law. This book was not evidence of what commissions Sobieraj received from Marzec but rather what portion thereof he turned over to his mother-in-law. This book never should have been offered or received in evidence. And the damage has been done! As this Court knows, the Defendant
241 Sobieraj in this black book, made self serving entries as to the amounts of cash commissions he had received from Mr. Marzec involving innumerable buildings. This Deponent asked for two hours to check this book against the records of the Defendant Marzec, all for the purpose of cross-examination. It was then represented to this Court by the United States Attorney that this Deponent "has known we had this record for a long time". This Deponent then stated that he knew of it the other day, but nobody ever offered it to him. This Court insisted he wanted to go ahead with the lawsuit. This Deponent insisted that he wanted to examine the book, and this Court ordered this Deponent to "proceed with the cross-examination". (Transcript 332-333.) All in the presence of the jury. When it was offered in evidence, this Deponent objected to it, the Court then proceeded to interrogate the witness, and it was received in evidence. On Thursday, February 7, 1957, Mr. Worcester in his direct examination testified that he prepared certain summaries based upon this black book and gave Mr. Marzec credit for only those commissions paid Mr. Sobieraj as shown by this black book.

This Deponent objected to these summaries on the grounds that he had not had an opportunity to examine said black book or a chance to check it. This Court then stated, "You have had it. You had an opportunity before
trial." When this Court was advised this Deponent
242 had not an opportunity before trial, this Court stated
"objection overruled". This Deponent then stated "I saw it for the first time when this trial started". The Court again stated "objection overruled". All in the presence of the jury. (Record 491.)

The representations of the United States Attorney that this Deponent had had an opportunity to examine this book a long time before was a most flagrant misrepresentation of the facts. As will appear from the record, in the proceedings of January 23, 1957, it was represented to this Court that the Defendant Sobieraj when he pled guilty, furnished "new and additional evidence as to the Defendant Brandt and the Defendant Kusper" and that he would make it available to the Defendants and then he stated that they received additional facts which would throw light upon the guiit or innocense of the Defendants Brandt and Kusper, which would not include the Defendant Marzec. On this record, he would say that this book was available to Mr. Marzec after having certainly indicated that Mr. Sobieraj had furnished no additional evidence against Mr. Marzec, and this Court would say, without the semblance of basis of fact, that this Deponent had this book and had an opportunity to examine it before trial; all in the presence of the jury.

As Mr. Sobieraj was about to leave the stand, a motion was made to strike the document on the ground that this Deponent did not have an opportunity to cross-examine
on it. This Court then advised this Deponent that it
243 would be here subject to your examination throughout
the trial. Then the following occurred:

By Mr. Struett: The witness will be available if I want him?

By The Court: That is up to you, if you want him, you get him.

All in the presence of the jury.

As part of this Motion, this Deponent adopts by reference the entire proceedings of February 7, 1957.

This Deponent for several years has not been too well. He has a heart block, as can be verified by his doctors. He has other ailments, some of a rather serious nature, which can equally be verified. He has been recently told to go into the hospital. He has had to slow down in his work and take long rests, and has given serious consideration to retiring from the practice. It is most true as would appear from the record that this Court has seen this Deponent work far more strenuously in other years, but that does not change the present situation. This Deponent sought to make his position most clear to this Court, to comply with every request of this Court, and do everything humanly possible to "hurry up the matter" and "get the evidence in", and at the same time adequately protect his client's interests.

Again referring to the proceedings of the afternoon of February 7, 1957, this Deponent was just physically
244 unable to proceed and adequately represent his client as certainly should appear by this record. Yet, for all practical purposes, he was forced to proceed, making it appear to the jury that he did not know what he was doing, all to the detriment of his client, and even as of today, he does not know whether or not he made adequate motions and whether or not his cross-examination of the parties was adequate, and the Government's case is closed.

On February 8, 1957, the Agents were kind enough when they were assembling their Exhibits to assemble Exhibits for this Deponent, which were in their file, and list them,

and this Deponent went over to their office at 3:00 p. m. to get them. When he signed for them, the Agents advised him that he ought to have Mr. Worcester's work papers in order to check the summaries prepared by Mr. Worcester. Then they told him that he also should have the little black book. So his accountant got these work papers about 4:00 p. m. on February 8, 1957, and the Government had closed its case on the previous day. Deponent's first opportunity to really examine this book was on Feb. 10. He then discovered that it was not his, but hers.

Motion for a Continuance for Ten Days.

With due deference to everybody, this is the screwiest trial that this Deponent has ever been in. It would appear conclusive from this record that Mr. Marzec was sharing these (cash) commissions with these other three Defendants as charged in the indictment. It would equally appear that there is no question but that Mr. Brandt got sub-
245 stantially the amount charged against him by Mr. Marzec in his figures, that Mr. Sobieraj got at least only one-half of the amount presuming anyone is to believe his testimony. The Grand Jury did not—all as shown by the record. Then the Government puts on a witness who conducted an investigation and seemingly determined that Mr. Kusper had not received any of these (cash) commissions, found no evidence to that effect from the evidence offered or his investigation outside the record, and who then gives Mr. Marzec credit for none of the commissions he paid to Mr. Kusper other than the Repsuk checks and possibly others to Kusper which checks were reported. It is this Deponent's recollection that an indictment was filed in this case based upon testimony presented to the Grand Jury. The Grand Jury obviously must have been furnished evidence by the United States Attorney that Mr. Kusper received part of these (cash) commissions for the years in

question. Or the distinguished United States Attorney went into the Grand Jury without the semblance of evidence against Mr. Kusper and returned an indictment charging him with the receipt of these (cash) commissions from Mr. Marzec. The latter is just nonsense. Yet, it is what they would now have this Court and jury believe. It is difficult to comprehend how the United States Attorney can now proceed with Mr. Kusper's prosecution when his witnesses in this case swear that the Government has no evidence against Mr. Kusper as to the receipt of these cash commissions. What is going on? The United States Attorney appears to be attempting to frustrate the very action of the Grand Jury, which action he himself induced. He induced the Grand Jury to indict Mr. Kusper on the 246 theory that he received these cash commissions. Now he would produce evidence that Mr. Kusper is not guilty, in that he did not receive these commissions! It is quite apparent that the United States Attorney is neither thinking or acting straight.

It is undisputed that Mr. Marzec furnished the United States Attorney much evidence and information relating to these commissions and how they were split. This Deponent at least remembers that evidence, and with due deference to the United States Attorney, he has much evidence in his file to establish that Mr. Kusper received part of these commissions and in cash. Certainly the record shows that Mr. Kusper did share in these commissions, at least in part, with checks made out to him with his name spelled backwards. In addition, they have in their files available evidence that Mr. Kusper would expedite certain loans and not expedite others, and much more circumstantial evidence that Kusper actually received these commissions.

When Mr. Miller was on the stand, he testified under oath that he never made out any checks to Mr. Kusper's wife in her maiden name. The Government said they had no such checks. The next day they admitted to this Deponent

that they had the checks. What is the Government doing in this case? Are they so determined to convict Mr. Marzec that they would conceal evidence beneficial to him? If so, they should read *Berger* v. *United States*, 295 U. S. 278, at page 288, and they should also acquaint themselves with the utterances of Judge Igoe in the case of *United States ex rel. Montgomery* v. *Ragen*, 86 Fed. Supp. 382, in which he comments on the duties of a prosecutor to a defendant and on a prosecutor who would conceal evidence beneficial to a Defendant. This situation here is even worse than where this same United States Attorney concealed evidence in the *Goldberg* case.

248 In the light of Mr. Worcester's testimony, seemingly the Defendant Marzec in his defense is to be required to prove the Government's case against Mr. Kusper as alleged in this very indictment. Are we trying Marzec or Kusper here.

When this Deponent argued his motion for a continuance on February 4, 1957, he heard a rumor that the indictment against Mr. Kusper was to be dismissed. He sought to confirm this rumor, both with the United States Attorney and with the attorney for the Defendant Kusper, with little satisfaction from either of them. If this rumor be true, it would appear that the present United States Attorney is a real dealer and horse trader. First he would make a deal with Mr. Marzec to get the other three defendants and then having gotten those of the other three that he wanted, he would make a deal with some of them and Mr. Kusper to get Marzec.

Since the United States Attorney through the testimony of Mr. Worcester has compelled the Defendant Marzec to prove the guilt of Mr. Kusper, and since the Investigating Agents could not find any evidence of these cash payments in Mr. Kusper's books and records, which they examined,

it is quite apparent that the testimony of the Defendant Marzec must be corroborated by a means of much circumstantial evidence which is in the files of the United States Attorney and which Marzec himself furnished them. This may take us several months to go through their files, the Grand Jury testimony, and everything else because we certainly want to make certain that they are not concealing
249 any evidence against Mr. Marzec and we want to make full use of the testimony. It might well be that having concealed this evidence, that the United States Attorney is now bound to take over the representation of Mr. Marzec and proceed with his defense rather than this Deponent. As stated, this Deponent in thirty-five years of practice never ran into such a screwy mess in his life. It is worse than the *Koplin*, *Korer* and *Goldberg* cases in combination.

This Deponent, on February 7, 1957, at the conclusion of the Government's case, represented that he would be ready to proceed with Defendant Marzec's case on Monday, February 11, 1957, though that representation might have been a bit influenced by his physical condition and this Court's insistence that he was going to compel this Deponent to proceed with the defense on Friday, February 8, 1957, Deponent's physical condition and lack of preparation notwithstanding. This Deponent will be "ready". He keeps his bargains. He can but advise this Court that it is quite apparent that the United States Attorney is now out to "get Marzec" and "absolve Kusper", and it is incumbent upon this Deponent to give Mr. Marzec the best representation he knows how to the best of his ability under the circumstances created by this Court. Equally, he is duty bound in the interests of his client to advise this Court that he is not prepared to proceed with the Defendant's case in that it has been impossible for him to examine many of the documents in evidence, to adequately evaluate the issues, to fully interview witnesses, and to prepare in-

structions. In reviewing the record, it would appear that a motion should be made to reopen the Government's case and to conduct further examination of the witnesses of the Government. But, in any event, "if the show must go on" he will be "ready" and will do the best he can to protect the interests of his client. However, nothing herein stated is to be construed as a waiver of any of this Defendant's rights herein should this Defendant be convicted and an appeal be necessary.

These motions are dictated hurriedly to the best of this Deponent's ability. They are probably poorly organ-
250 ized and probably much pertinent matter has been omitted, and this Deponent will have to have these motions written as dictated without reading them or reviewing them. He has done the best he can under the unfortunate circumstances present here.

The record before this Court would seem conclusive that Defendant Marzec had little, if any, representation by competent counsel during the course of the investigation. The testimony of the examining agents clearly indicates that Mr. Marzec's so-called representatives put him in the worse possible position and it all ended up with their assurance that he was hooked and would go to the penitentiary. It would certainly be most unfortunate if this same Defendant were now convicted after having been inadequately represented by counsel who had not been given a full opportunity to prepare for trial. It is this Deponent's position that the computations of the Defendant Marzec's alleged tax liability herein were a fraud on this Court and this Defendant; that they should be thrown out and a verdict of not guilty forthwith directed in favor of the Defendant Marzec.

Further this Deponent sayeth not, except to conclude with the Biblical admonition: "The race is not to the swift,

nor the battle to the strong." (*United States* v. *Koplin*, 227 F. 2d 80.)

Joseph A. Struett.

Subscribed and sworn to before me this 11th day of February, A. D. 1957.

Christine Codner,
Notary Public.

(Notarial Seal)

Filed Feb. 11, 1957. Roy H. Johnson, Clerk.

251 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-Cr.-679) * *

Monday, February 11, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and the Court being fully advised it is

Ordered that the defendant's motion for judgment of acquittal made at the close of the Government's case be and the same is hereby denied and thereupon the defendant by his counsel enters his motion to wthdraw a juror and declare a mistrial which motion is denied whereupon the defendant by his counsel enters his motion for a continuance of the case which motion is denied and now come the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause and the trial proceeds and during the hearing of evidence on behalf of the defendant the hour of adjournment having arrived it is

Further Ordered that the Jury and Alternate Jurors be permitted to separate until February 12, 1957 at 10 a. m.

252 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.-679) * *

Tuesday, February 12, 1957.

Present: Honorable John P. Barnes, Chief District Judge.

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant in his own proper person and by his counsel and the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause also come and the trial proceeds and during the hearing of evidence on behalf of the defendant the defendant by his counsel enters his motion to withdraw a Juror and declare a mistrial which motion is denied and the trial proceeds and at the close of all the evidence the defendant by his counsel renews his motion to withdraw a Juror and declare a mistrial, filed on February 11, 1957, which motion is again denied and thereupon the defendant by his counsel enters his motion for judgment of acquittal which motion is also denied and the hour of adjournment having arrived it is

Ordered that the Jury and Alternate Jurors be permitted to separate until February 13, 1957 at 10 A. M.

256 UNITED STATES DISTRICT COURT.

• • (Caption—55-Cr.-679) • •

VERDICT.

We, the Jury, find the defendant, Joseph T. Marzec, guilty as charged in counts 7 & 8 of the indictment.

C. Edwin Nelson,
Foreman,

James M. Walsh,
Lyndell Brown,
Fred H. Hitzeman,
William J. Carnell,
William O. Neuman,
Eleanore Quinlan,
Tillie J. Patti,
Irene H. Thomas,
Vincent P. Corbet,
Winifred Sandine,
Lois C. Sherman.

259 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America, *vs.* Frank A. Brandt, Stanley T. Kusper, Bruno J. Sobieraj, and Joseph T. Marzec.	No. 55 Cr. 679.

MOTION OF JOSEPH T. MARZEC FOR JUDGMENT OF ACQUITTAL AND, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL.

(Filed Feb. 18, 1957. Roy H. Johnson, Clerk.)

Joseph A. Struett,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665,
Attorney for Defendant
Joseph T. Marzec.

260 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—55-Cr.-679) * *

MOTION OF JOSEPH T. MARZEC FOR JUDGMENT OF ACQUITTAL AND, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL.

Now comes the Defendant, Joseph T. Marzec, by his attorney, Joseph A. Struett, and moves for judgment of acquittal and for a new trial herein and as grounds therefor, states as follows:

1. The Court erred in refusing to continue this cause until application for executive clemency could be made or

until its dismissal; in refusing a continuance of said cause until the case of the other Defendants herein had been disposed of; and in refusing a continuance of said cause at least for a reasonable time to afford Defendant's counsel sufficient time to adequately prepare for trial, and in support thereof the Defendant hereby adopts by reference and makes a part hereof his printed motions for continuance and other relief filed herein and presented herein on February 4, 1957.

2. The Court erred in denying Defendant's written motion to withdraw a juror and declare a mistrial and for
261 a continuance, which written motion was filed and presented on February 11, 1957, and by reference is made a part hereof, and the Court further erred in again denying said motion to withdraw a juror and declare a mistrial, when it was renewed at the conclusion of all of the evidence.

3. The Court erroneously refused to permit this Defendant as a part of his case in chief to fully, fairly, and completely develop and present his defense to the jury. This Defendant as an accomplice, had admitted his culpability and in a sense was guilty in that he had not correctly reported his true income in the years in question as required by law. As evidence of his willful intent, the Government had introduced these facts and the further fact that he had misrepresented the true situation to the Bureau agents during the course of the investigation.

His defense in substance was:

1. That he was but an employee acting under the direction of his superiors and a victim of circumstances and/or a dupe; and that he could not report all of these commissions without involving his superiors.

2. That the misrepresentations to the agents that he had not received these commissions, most of which he received in cash, were made with the knowledge and upon the advice of the other Defendants herein and his

262 former counsel whom they in fact selected, and upon the assurances of all of them that since cash was involved, it would be hard to prove; that it would be for the best interests of everybody concerned if he denied receipt of these cash commissions; that they had friends within the Bureau; that they would be able to settle this case without injury to this Defendant, and that once this case was settled as aforesaid, they would get the bill and the taxes would be paid.

3. That as a matter of fact, all of them were continuously misleading, deceiving, and "framing" this Defendant and concealing from him the true situation in that they were not making any real effort to settle said case, but rather were attempting to put this Defendant in the most unfavorable position possible with the investigating agents and to "load" upon him all income tax liability, criminal and civil, for all commissions received by him, the largest part of which he had passed on to the other Defendants—the situation was so bad that this Defendant did not know of the denial affidavits given by the other Defendants and the fact that this case had been cleared for prosecution as against him only until nearly a year after the meeting
263 in the Regional Counsel's office (September 12, 1952) when it had reached the office of the United States Attorney, though during the same period this Defendant was repeatedly advised and assured that his case was about to be settled.

4. That once he discovered the true situation, he employed new counsel, was correctly advised, immediately made a full disclosure of the true facts to the Government, and it was entirely through his efforts, cooperation, information, and testimony, with much opposition from the Bureau, that these other Defendants were brought to the bar of justice and at least two of them successfully prosecuted. The strongest evidence of what had actually occurred during the course of the investigation as contended by this Defendant and in defense of his then conduct obviously was what he did and what actually occurred after he had discovered the true situation.

Much of this defense had real substance though some of its aspects might not have been the best. Yet, as a whole, it seemed to have little appeal to the Court. Be this as it may, under our Federal Constitution and our established American system of jurisprudence, this Defendant had a right as a part of his case in chief to fully, fairly, and completely develop said defense in an orderly, organized,
264 complete manner consistent with established rules of procedure and evidence; to corroborate this defense by such facts as were in the files of the United States Attorney in that the United States Attorney is never permitted to conceal evidence beneficial to a defendant, and a right to have a jury of his peers pass on that defense as so developed. Such is the fundamental right of every American citizen and taxpayer and was most erroneously denied this Defendant in this case.

The Court erroneously excluded all evidence subsequent to September 12, 1952, the date of the hearing in the Regional Counsel's office (and denied many offers of proof relative thereto), on the theory that it was immaterial to the issues in this case, and further erroneously concluded that substantially all of Defendant's subsequent acts were merely an attempt on his part to ingratiate himself with the United States Attorney—and, therefore, inadmissible.

As to the event prior to September 12, 1952, the Court erroneously refused to permit the introduction of much pertinent evidence and denied many offers of proof relative thereto. The Court errone usly:

1. Refused to permit this Defendant to fully develop the circumstances under which he employed "his" counsel (recommended by broker Miller) and "paid" him though that employment was directly connected with at least two of the other Defendants, Brandt and Sobieraj.

265 2. Refused to permit this Defendant to fully develop broker Miller's full knowledge of this entire situation

and his relationship with these other Defendants and the investigating agents, even though one of the agents admittedly shortly after he left the Service went to work for Miller's accountant and in turn Miller. The other agent admitted that he was at Miller's office discussing this Defendant's case with Miller and "this Defendant's" attorney. The Court may have erroneously regarded said Miller's position herein much as if he were a stranger to it—"a policeman on the street".

3. Refused to permit this Defendant to fully develop the fact that when his present attorneys were unable to procure the return of certain of this Defendant's exhibits (the Repsuk checks) from the Bureau, said Miller was able to do so, by contacting one of the agents in this case, and refused to permit the checks involved to be received in evidence (Defendant's Exhibits 25 A to 25 I).

4. Refused to permit this Defendant to fully develop the circumstances under which the agents had procured the "non-sharing" affidavit from the Defendant Sobieraj (Defendant's Exhibit 17).

266 5. Refused to require the Government to produce affidavits of similar purport and effect of the other two Defendants, Brandt and Kusper, to have them marked as exhibits for this Defendant, and to permit him to offer them in evidence.

6. Refused to permit the Defendant to develop the circumstances under which broker Miller delivered his affidavit (Defendant's Exhibit 11) to the agents, which affidavit was to the effect that he, Miller, had "dealt only" with this Defendant as to the commissions paid and then refused to permit said affidavit to be received in evidence.

7. Refused to permit this Defendant to offer evidence that the Defendant Sobieraj had arranged a dinner with a third party, whom he, Sobieraj, represented to be from the Internal Revenue Service, and that at this dinner this Defendant was advised by those present that since cash was involved, it would be hard to trace.

8. Refused to permit this Defendant to introduce in evidence pertinent documents properly identified establishing that this Defendant had shared at least part of these commissions with the Defendants Sobieraj and Kusper, and establishing that the investigating agents had knowledge of this fact practically from the inception of this investigation.

267 9. Refused to permit this Defendant to offer evidence that his first knowledge that his case had left the Bureau with its recommendation that he alone be prosecuted was nearly a year later.

10. Refused to admit in evidence the letter and envelope in which it was contained, which accountant Wilson had received on September 25, 1952 from the Regional Counsel's Office, advising him that this Defendant's case had been referred to the Department of Justice, which documents as aforesaid were produced by Mr. Wilson at the trial (Defendant's Exhibits 16 and 16A).

Many of the facts which this Court had excluded as aforesaid, and particularly those subsequent to September 12, 1952, were brought out, or their bringing out was precipitated, by the United States Attorney through his cross-examination, but then they were brought out and crept into the record only in a most incomplete, disorganized, jumbled manner, and then by way of cross-examination they were grossly belittled and distorted as to their true purport and effect, all most adversely to this Defendant. Even then, the Court erroneously:

1. Refused to admit in evidence the lengthy statements which this Defendant had furnished the Government (Defendant's Exhibits 19 and 20).

268 2. Refused to admit in evidence the receipt of Mr. Rieger to agent Wolfe for the return of the Repsuk checks (Defendant's Exhibit 21), the return of which checks had been arranged for by broker Miller after this Defendant's present counsel could not get them.

3. Refused to compel the United States Attorney to produce the Grand Jury testimony of Brandt and

Kusper to the effect that they had received no part of these cash commissions, refused to have said testimony marked as Defendant's exhibits, and refused to permit it in evidence, seemingly on the theory that this Defendant had not offered to prove this fact.

4. Refused to permit the introduction into evidence of Mr. Sobieraj's Grand Jury testimony to like effect (Defendant's Exhibit 18).

5. Refused to permit the introduction into evidence of a certified copy of the Count of the Indictment to which Mr. Sobieraj had pleaded guilty and certified copies of the pleas of guilty of Mr. Sobieraj and Mr. Brandt (Defendant's Exhibits 48 to 50).

6. Refused to permit the introduction into evidence of Mr. Marzec's Grand Jury testimony (Defendant's Exhibit 41).

269 4. The Court erred in permitting the United States Attorney throughout the trial—and particularly during the cross-examination of this Defendant and under circumstances where objections would merely do more harm to the Defendant—to abuse and misuse and turn against this Defendant in a wholly unconscionable manner the information, documents and oral testimony which he had furnished to the United States Attorney long prior to trial and all of which was required, accepted, and used by the United States Attorney in order to bring about the indictment of the other Defendants herein and the successful prosecution of at least two of them. (The United States Attorney apparently in this trial was attempting to try the issues presented by this Defendant's motion of February 4, 1957. If there were factual issues therein involved, obviously evidence should have then been heard before the Court denied said motion.) The United States Attorney persistently made it appear by way of cross-examination that this Defendant "voluntarily" gave this information without any commitment from him, that it was of little value, was inaccurate, and even false, all without ever hav-

ing discussed said information with this Defendant or his counsel prior to trial and all in plain violation of the spirit and letter of the decision of our Supreme Court in *Berger* v. *United States*, 295 U. S. 78, 88. And, this Court er-
270 roneously refused to permit this Defendant to show that the United States Attorney had had this information, factual and documentary, for a long period of time prior to the trial and had never prior to the trial objected to any of it. The conduct of the United States Attorney as aforesaid is emphasized by two illustrations:

1. The United States Attorney without the semblance of justification or fact asked this Defendant—not once, but four times—whether or not it was true that Mr. Reeb, a then Assistant United States Attorney, had at the time this Defendant presented his long written statements (Defendant's Exhibits 19 and 20), warned him that he was in effect signing "a death bed confession". Obviously, as appears from Mr. Reeb's own testimony offered by the Government, no such warning was ever given, and this reprehensible conduct of the United States Attorney was just one "foul" blow after another, and four times in succession.

2. On cross-examination, this Defendant was interrogated as to his appearance and testimony before the Grand Jury. The United States Attorney then immediately produced his Grand Jury testimony and immediately undertook to ask him several stock questions
271 from that transcript to the effect that he had voluntarily testified. Then, after he brought out that this Defendant had, pursuant to agreement with his counsel, been asked only certain specific questions, obviously the amounts of these commissions which he had passed on to each of these Defendants, he objected to this Defendant testifying to this latter fact, and then objected to the introduction of his entire Grand Jury testimony to like effect, and this Court erroneously sustained said objections and erroneously refused to strike out the several stock questions.

As part of this same situation, the United States Attorney from the very inception of this case up to its termination was guilty of much misrepresentation of the true facts herein, both to this Court and to the jury by means of half-truths and distortion of facts and evidence. He seemingly was determined to force this Defendant to trial despite the fact that his counsel was not prepared for trial and was not well. He took every advantage of this fact at every opportunity, and in every conceivable way, all to obtain a "conviction", regardless of how much error crept into the record. As would appear from numerous objections he made, the United States Attorney seemingly was
of the opinion that this Defendant through his own
272 witnesses was not entitled to contradict the evidence
of any Government witness except to impeach that witness and that defense counsel had not laid a proper foundation for such impeachment, and this Court erroneously sustained most of such objections of the United States Attorney to evidence which was clearly admissible on behalf of this Defendant.

The United States Attorney was forthright with this Court, defense counsel, and jury about nothing. One glaring illustration should suffice: When Miss Sipiora was on the stand and the evidence disclosed that she had been subpoenaed but told to stay away, the United States Attorney did not hesitate to infer that he still had Mr. Kusper's case to try and that her testimony would then be required, even though, as this Defendant's counsel has now been advised, he then had in his possession authority from the Attorney General dated January 31, 1957 authorizing him to dismiss the case as against Mr. Kusper.

The motion to dismiss as to the Defendant Kusper may be presented to the Court before this motion for a new trial is filed. Should the United States Attorney represent that he has insufficient evidence to prosecute, and

that would seem to be the only reason for his action, it would at once appear that he either misrepresented the true facts to the Grand Jury or that he is now attempt-
273 ing to frustrate and is frustrating the action of the Grand Jury in indicting Mr. Kusper, which action he himself induced. As will hereafter appear, he had before the Grand Jury and still has the benefit of Mr. Marzec's direct testimony that he shared these commissions received in cash with Mr. Kusper. He also then had and still has much additional circumstantial evidence corroborating the direct evidence of Mr. Marzec, much of which we ourselves furnished him, and even much which he himself obtained. In addition, on January 23, 1957, he represented to the Court that he had but recently procured additional evidence against Mr. Kusper. We have since been advised by him that this additional evidence was to the effect that one Kazor had also shared commissions with Mr. Kusper during the years in question, which commissions Mr. Kusper did not report. These facts are most pertinent as reflecting the unconscionable conduct of the United States Attorney in this entire matter. And, particularly so when we consider the fact that he put Agent Worcester on the stand and had him testify in effect that as a result of his investigation he could discover no evidence that Mr. Kusper had shared in these commissions (other than the checks he received), thus attempting to establish that Mr. Marzec's testimony was false. It would appear that this ever shifting United States Attorney was so intent on obtaining a "conviction" against Mr. Marzec that he
274 not only may well have concealed evidence beneficial to Mr. Marzec, but even worse may well have made use of false testimony to effectuate his intent.

5. This Court erroneously admitted in evidence the "little black book" of Mr. Sobieraj (Government's Exhibit 33) without affording Defendant's counsel adequate oppor-

tunity to examine same and cross examine as to same, and erroneously refused to strike Mr. Sobieraj's testimony and said document when it appeared that Mr. Sobieraj's testimony was false in that said document was only the cash book of his mother-in-law, did not contain all the commissions he (Sobieraj) had received from this Defendant, and that said book was not admissible against this Defendant for any purpose. In addition, the Court erred in refusing to strike the testimony of Agent Worcester and his computations which were admittedly based in part upon said black book.

6. The Court erroneously excluded Defendant's offered evidence to the effect that the arrangements between these Defendants as to their proportionate sharing of these commissions had been partially changed in 1951 and further changed in 1952; that this latter change was at the direction of the Defendant Sobieraj and agreed to by the Defendant Brandt; that it was to the effect that he (Sobieraj) should thereafter receive 2 points or about one-half of said commissions; that pursuant to said latter
275 change, Mr. Sobieraj did receive said 2 points and that this Defendant paid him said 2 points by way of checks and had complete then present and available records and cancelled checks to establish that fact. The exclusion of this evidence was particularly damaging to this Defendant since the Government had made it appear through the testimony of Mr. Sobieraj that he, Sobieraj, during the years in question (1949 and 1950) was the object of this Defendant's bounty as to the share of commissions he received, that there was no express agreement between the parties, and that he, Sobieraj, received and accepted whatever share of said commissions that this Defendant desired to give him.

7. The Court committed many errors in relation to the Government's Exhibits 41 and 42, remarked as Defend-

ant's Exhibits 45 and 46. Basically these were summary sheets prepared by Mr. Marzec from available records of himself and the Union, showing the names of the brokers, the addresses of the properties on which particular loans were made, the total commissions received on each loan, and how the commissions were divided between the parties to the joint venture, with the total commissions received by each Defendant for 1949 (Defendant's Exhibit 45) and for 1950 (Defendant's Exhibit 46). The brokers involved, the amounts of the loans, the parties involved, and the commissions paid, all could be readily verified and
276 checked, and substantially appear as part of the Government's case. The distribution of the commissions paid the other members of the joint venture was obviously dependent upon Mr. Marzec's version and later given testimony, first before the Grand Jury and then in open court of the agreement of distribution. All supported by certain sheets of original entry, some of which he still retains (Exhibits 34 to 41), also supported by a net worth statement prepared by his accountant, and supported by much other circumstantial evidence. He prepared these summaries for presentation to the United States Attorney so that he could present definite figures to the Grand Jury as to exactly the amount of these commissions received by each Defendant. They were delivered to the United States Attorney, used by him in support of Mr. Marzec's testimony before the Grand Jury, and no objection was ever made to them prior to the trial. Yet, the Court erroneously refused to permit this Defendant to show all these facts, though some of them did get into evidence in a haphazard manner.

Then, after the United States Attorney had interrogated this Defendant concerning these two documents and cast aspersions upon them, the Court again erroneously denied Defendant's offer of proof as to the circumstances under

which they were prepared and the testimony of his accountant. Seemingly, on the theory that the Court regarded them as manufactured evidence. These documents and
277 the offered testimony were clearly admissible and the error in denying their admission was magnified when the United States Attorney throughout his argument to the jury emphasized and re-emphasized that Mr. Marzec had failed to produce any evidence showing the amounts of these commissions which he had paid over to each of the other Defendants.

8. The Court erred in refusing to strike the testimony of Agent Worcester, his compilations and computations. and the testimony of Agent Ruggaber whose expert testimony was based upon Mr. Worcester's computations as aforesaid, in that Defendant's counsel was not afforded ample opportunity to cross-examine said Worcester and pertinent records involved and for other reasons then and here stated. Agent Worcester in his testimony and computations admitted that he had given this Defendant credit only for such commissions distributed to Mr. Sobieraj as they appeared in the little black book produced by Mr. Sobieraj (Government's Exhibit 33). Since this book was inadmissible for any purpose, this testimony of Mr. Worcester should not have been permitted to stand. This Court then erroneously permitted Mr. Worcester to testify that he allowed this Defendant credit for no commissions paid Mr. Kusper other than the Kusper and Repsuk checks (Kusper spelled backwards), in that he had examined Mr. Kusper's books which failed to show the receipt of any additional commissions and Mr. Kusper had told him
278 he had received none, and in effect that his investigation failed to disclose any evidence that Mr. Kusper had received part of these commissions in cash as testified to by Mr. Marzec.

Mr. Worcester's testimony in this regard would appear

to be patently false. He had available to him Mr. Marzec's testimony before the Grand Jury, which was accepted by the Government, that he, Mr. Marzec, had shared these cash commissions with Mr. Kusper. In addition, he had available to him much other circumstantial evidence corroborating this testimony of Mr. Marzec. He had available to him the testimony of Dorothy E. Sipiora, Mr. Kusper's former secretary for a number of years, and her signed statement used before the Grand Jury (Defendant's Exhibit 22), which included Mr. Kusper's admissions to her that he, Kusper, had shared in these commissions until the Union convention in September of 1950. Also, her affidavit furnished him (Defendant's Exhibit 51) to the substantial effect that Mr. Kusper also kept a "little black book" as to these commissions received. Agent Worcester also had available to him the information furnished him by Mr. Mroz, who had been Mr. Kusper's assistant for a period of approximately four years, which information and evidence appears herein by proof and offer of proof. Also, he had available to him evidence that Mr. Kusper had shared in commissions paid others during the years in question which he had not reported.

279 The Court erroneously excluded this Defendant's Exhibit 22, Miss Sipiora's statement, and her affidavit (Defendant's Exhibit 51), and the testimony and offered testimony of Mr. Mroz, apparently on the theory that we were not trying Mr. Kusper here. All this evidence was admissible in corroboration of Mr. Marzec's testimony that he had shared these commissions with Mr. Kusper, and, in addition, to prove the falsity of Mr. Worcester's testimony and computations.

Again, the Court erred in denying this Defendant's motion to strike Mr. Worcester's testimony, his computations, and Mr. Ruggaber's expert testimony founded on

Mr. Worcester's testimony and computations for all of the above reasons and for the further reason that his computations were speculative, capricious, irresponsible, and senseless.

9. This Court erroneously refused to give defense counsel adequate time in which to prepare and submit adequate instructions on Defendant's behalf. In addition, the Court refused to give to the jury a tendered instruction of this Defendant to the effect that they could find this Defendant guilty of a lesser crime than the crime charged in each count of the income tax indictment. This instruction was patterned upon the refused instruction given in the *Berra* case, the refusal of which the Supreme Court held was proper. *Berra* v. *United States*, 351 U. S. 131. In tendering this instruction to the Court, defense counsel advised the Court of this fact and further advised the Court that he understood that the Supreme Court was again considering this problem in the *Costello* case.

The Court also erred in giving to the jury Government's Instruction No. 8, in that it was separate and apart from all other instructions given; it lacked clarity; confounded an investigation of Agent Worcester made outside the record of this case with the evidence and exhibits in this case; and erroneously permitted the jury to consider matters outside the record.

10. This Defendant was denied his Constitutional right to a fair trial (as heretofore developed and as here appears) and deprived of the right of counsel as provided for in the Sixth Abendment of our Constitution. He was in fact subjected to a trial by force with his counsel not prepared or well, and subjected to a "rush, hurry-up" trial to get the "evidence in", even without affording, even a prepared and well counsel, ample opportunity to cross-examine and examine documents necessary for such

280

cross-examination. As this trial was conducted, it was humanly impossible for this Defendant's counsel, even if prepared and well, to keep up with the evidence, to adequately protect the interests of this Defendant and give required attention to matters of his defense. These facts
are not answered by the Court's statement to De-
281 fendant's counsel on February 11, 1957, "If you are
not prepared, it is your own fault", and then insisting "I want you to go ahead and give him a fair trial."

11. There are facts here involved which required the Court "in solicitude for the essential rights of the accused" to have paused and inquired further before he permitted this case to go to the jury, even aside from the action of the United States Attorney heretofore developed. It is undisputed from the record that one of the Revenue Agents herein was in communication with Mr. Wilson about this case even before this Defendant knew or employed said Mr. Wilson. These "non-sharing" affidavits of the other three Defendants in combination stand out "like a sore thumb". There is not the semblance of justification for them, or the semblance of explanation as to why they were obtained, the circumstances under which they were obtained, and/or why they were a part of the files in this case. Admittedly, one of the Agents purchased a building from Broker Miller on which the Union had made a loan. As appears from this Defendant's Exhibits 19 and 20 (the lengthy statements) this loan was made by "this Defendant's" former attorney. Much additional evidence on this same subject appears in said Exhibits, appears herein, and also appear in the statement of Miss Sipiora (Defendant's Exhibit 22). The Govern-
ment's evidence was conclusive that these Agents were
282 advised from the very beginning that this Defendant
was only a collector. Yet, this case was cleared by the Bureau into Justice, recommending only the prosecu-

tion of Mr. Marzec, with affidavits of these other three Defendants to the effect that they had received no part of said commissions. All these facts in combination certainly furnish at least a most strong suspicion that all was not well in connection with the investigation of this case by the Bureau, and that this investigation most certainly was not as it should have been.

12. There appears herein a set of facts so repulsive to a due and proper administration of our Revenue laws and so obnoxious to a due and proper administration of Federal Criminal Justice by our Federal Courts that the Court erred in denying Defendant's motions for a directed verdict (acquittal) both at the close of the Government's case and at the close of all the evidence. And, this Defendant is now entitled as a matter of law to have his motion for a new trial granted, his conviction set aside, and a judgment of acquittal entered in his favor and he so moves.

Respectfully submitted,

Joseph A. Struett,
Attorney for Defendant
Joseph T. Marzec.

Joseph A. Struett,
Attorney at Law,
105 West Madison Street,
Chicago 2, Illinois,
FRanklin 2-0665.

1 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—55-Cr.-679) * *

(Filed Mar. 8, 1957. Roy H. Johnson, Clerk.)

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable John P. Barnes, Chief Judge of said Court, in his court room in the United States Court House at Chicago, Illinois, on Monday, February 18, 1957, at 10:00 o'clock a. m.

* * * * *

2 And thereupon the following proceedings were had herein:

By the Clerk: No. 55 CR 679. The United States *vs.* Stanley T. Kusper. For trial.

By Mr. Manion: Your Honor, at this time the Government would move to dismiss Counts 3 and 4 of the indictment relating to the defendant Stanley T. Kusper for lack of sufficient evidence with regard to each one of the Government's charges.

By the Court: Make the order.

By Mr. Sokol: Thank you.

By Mr. Manion: And we would move the Court to continue the matters as to defendants Sobieraj and Brandt until Thursday next, February 21, at which time the motion for judgment as to the defendant Marzec will be heard.

By the Court: All right.

By Mr. Struett: I want to renew my motion for acquittal, your Honor; I just gave it to the Clerk.

By the Court: Very well. Continued to the 21st.

283 IN THE UNITED STATES DISTRICT COURT.

For the Northern District of Illinois,

Eastern Division.

Monday, February 18, 1957.

Present:

Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Stanley T. Kusper. } No. 55 CR 679

On motion of the Government by the United States Attorney it is

Ordered that the Indictment herein be and the same is hereby dismissed as to the defendant Stanley T. Kusper.

284 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Monday, February 18, 1957.

Present:

Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Frank A. Brandt. } No. 55 CR 679

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued to February 21, 1957 at 10 A.M. for disposition as to the defendant Frank A. Brandt.

285 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Monday, February 18, 1957.

Present:
Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Bruno L. Sobieraj } No. 55 CR 679

On motion of the Government by the United States Attorney it is

Ordered that this cause be and the same is hereby continued to February 21, 1957 at 10 A.M. for disposition as to the defendant Bruno L. Sobieraj

286 IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois,
Eastern Division.

Monday, February 18, 1957.

Present:
Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Joseph T. Manser } No. 55 CR 679

This day comes the United States by the United States Attorney comes also the defendant Joseph T. Manser by his counsel and enters his motion to renew his motions for a directed verdict (judgment of acquittal) and file with his motion for a new trial said motion for judgment of acquittal which motion is entered and continued to February 21, 1957 at 10 A.M.

287 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Monday, February 18, 1957.

Present:

Honorable John P. Barnes, Chief District Judge.

United States of America
vs.
Stanley T. Kusper } No. 55 CR 679

On motion of the surety defendant Stanley T. Kusper and upon consent of the Government it is

Ordered that the Clerk of this Court be and he is hereby authorized and directed to return to said surety the sum of Two Thousand Dollars heretofore deposited as security for bond in the above entitled case.

288 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Frank A. Brandt. } No. 55 CR 679

This cause this day coming on for disposition on a plea of guilty heretofore entered to Count 1 of the Indictment comes the United States by the United States Attorney comes also the defendant Frank A. Brandt in his own proper person and by his counsel and being asked by the Court if he has any reasons why sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon the plea of guilty so interposed herein as aforesaid that the defendant Frank A. Brandt be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of One (1) Year on Count 1 of the Indictment and it is

Further Ordered that the defendant's motion that he be placed on probation be and the same is hereby denied and on motion of the defendant it is

Further Ordered that execution of sentence be and the same is hereby stayed until March 4, 1957 at 10 A.M. and that the defendant's present bond shall remain in full force and effect.

John P. Barnes,
United States District Judge.

February 21, 1957.

289 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Bruno L. Sobieraj. } No. 55 CR 679

This cause this day coming on for disposition on a plea of guilty heretofore entered to Count 5 of the Indictment comes the United States by the United States Attorney comes also the defendant Bruno L. Sobieraj in his own proper person and by his counsel and being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon the plea of guilty heretofore interposed herein as aforesaid that the defendant Bruno L. Sobieraj be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of One (1) Year on Count 5 of the Indictment.

It Is Further Ordered and Adjudged that execution of sentence be and the same is hereby suspended and that the defendant be placed on probation for a period of Two (2) Years in accordance with a probation order entered simultaneously herewith.

John P. Barnes.

February 21, 1957.

290 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Bruno L. Sobieraj
} No. 55 CR 679

PROBATION ORDER.

It appearing to the Court from an inspection of the records of this Court in the above entitled cause that on the 21st day of February, 1957, the defendant, Bruno L. Sobieraj having pleaded guilty as charged in Count 5 of the indictment heretofore filed herein against him for violation of Section 145(b), Title 26, United States Code (Wilfully and knowingly attempt to evade and defeat a part of income tax due and owing to the United States) was duly committed to the custody of the Attorney General for and during a period of One (1) Year.

And it further appearing to the satisfaction of the Court that the ends of justice and the best interests of the public, as well as of the defendant, will be subserved by the suspension of the execution of sentence as to Count 5 of the indictment and by placing the defendant on probation as to said Count 5:

It is therefore Considered, Ordered and Adjudged by the Court that pursuant and subject to "An Act to Provide for the Establishment of a Probation System of the United States, except in the District of Columbia," approved May 4, 1925, as amended, the execution of the sentence on Count 5 of the indictment be and the same is hereby suspended and the defendant be and is hereby placed on probation to the Chief Probation Officer of this Court for

the term of Two (2) years from and after February 21, 1957 under the following terms and conditions:

The Probationer shall:

(a) Report to the Chief Probation Officer in writing, or otherwise if the Chief Probation Officer so directs, once each month, or oftener if the Court or the Chief Probation Officer so directs, his post office address, whereabouts, conduct, and employment, and such other information as may from time to time be required by the Court or by the Chief Probation Officer;

(b) Refrain from the violation of any State or Federal penal law;

(c) Live a clean, honest and temperate life, keep good company and good hours;

(d) Work regularly at some gainful and useful employment, and when out of work, notify the Chief Probation Officer at once;

(e) Follow the advice and instruction of the Chief Probation Officer regarding employment, recreational, social and other activities;

(f) Provide for the support of any person or persons for whose support he is legally liable;

(g) Notify the Chief Probation Officer at once if he intends to change his address;

(h) Pay the fine imposed by the Court in said case as follows:

(i) Pay into the office of the Clerk of this court

for the use of _____ (Name) _____ (Address) the sum of $_____

for the use of _____ (Name) _____ (Address) the sum of $_____

for the use of _____ (Name) _____ (Address) the sum of $_____

as restitution to said respective persons for the actual damage or loss which the Court finds has been caused to said respective persons by h__ said offense, payment to be made as follows:

(j) Not leave or remain away from the judicial district in which he resides without the consent of the Court or of the Chief Probation Officer;

(k) Keep and observe the following special terms and conditions of probation:

Enter:

John P. Barnes,

Dated: February 21, 1957 *Judge.*

291 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Joseph T. Marzec } No. 55 CR 679

This cause this day coming on for hearing on the defendant's motion for a new trial and for disposition comes the United States by the United States Attorney comes also the defendant Joseph T. Marzec in his own proper person and by his counsel and the Court having heard the arguments of counsel and being fully advised in the premises it is

Ordered that the motion of the defendant for judgment of acquittal or in the alternative for a new trial be and the same is hereby overruled and denied and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon a verdict of guilty

heretofore rendered herein that the defendant Joseph T. Marzec be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment for a period of Three (3) years on each of Counts 7 and 8 of the Indictment, that said sentences shall run concurrently and it is

Further Ordered that the defendant's motion that he be placed on probation be and the same is hereby denied and it is

Further Ordered that bail of the defendant pending appeal be and the same is hereby fixed at the sum of Ten Thousand Dollars ($10,000.00).

February 21, 1957 John P. Barnes.

292 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

United States of America
vs.
Joseph T. Marzec
} No. 55 CR 679

NOTICE OF APPEAL.

(Filed Feb. 21, 1957. Roy H. Johnson, Clerk.)

Name and address of Appellant:

Joseph T. Marzec, 4182 W. Barry Ave., Chicago, Ill.

Name and address of Appellant's attorney:

Joseph A. Struett, 105 W. Madison St., Chicago, Ill.

Offense:

Attempting to defeat and evade his income taxes for the years 1949 and 1950 in violation of 26 U. S. C., Section 145B.

Concise statement of judgment or sentence and date thereof:

Defendant committed to the custody of the Attorney General for Three (3) Years, each on Two counts of the Indictment, said sentence to run concurrently Sentence imposed February 21, 1957.

Name of prison where now confined, if not on bail:

Custody of the United States Marshal, United States Post Office Bldg., Adams and Clark Sts., Chicago, Ill.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above-mentioned.

(Signed) Joseph T. Marzec,

Appellant,

By Joseph A. Struett,

Attorney for Appellant.

Dated: February 21, 1957